INDEX.

ACCORD AND SATISFACTION.

1. *Payments—Satisfaction—Part for all—Receipt.*—Payment of part of a debt or liquidated damages is not a payment of the whole debt, even when the creditor agrees to receive a part for the whole and executes a receipt for the whole, except in fair and well-understood compromises carried faithfully into effect or, if the payment is in any way more beneficial to the creditor than that prescribed in the contract.—Riley v. Kershaw, 224.

2. *Estoppel—Creditors—Partnership—Debt of one partner—Deeds of composition.*—A co-partnership conveyed all their assets to trustees for the benefit of their creditors, in pursuance of a resolution adopted at a meeting of the creditors. At that meeting a creditor of one of the partners was present, and by consent of all, his debt was admitted as a partnership debt. *Held*, that the creditors were afterwards estopped to deny that that debt was a partnership debt.—Diemeyer v. Hackman, 282.

3. *Deeds of composition—Releases—Validity—Creditors.*—Deeds of composition and releases, in the absence of fraud towards any creditors, are legitimate and should be upheld by the courts.—*Id.*

ADMINISTRATION.

1. *Administration—Probate Court, exclusive jurisdiction of—Circuit Court—Bill of Interpleader.*—The Probate Court has exclusive original jurisdiction in directing the appropriation of the proceeds of an estate by an administrator, and a bill of interpleader by an administrator in the Circuit Court to determine the claims of different parties on such funds cannot be sustained.—Chandler, Admr. v. Dodson, 128.

2. *Administration—Assets—Situs.*—In administration the real *situs* of the assets is, where the debtor resides and the assets are located.—Partnership Estate of Henry Ames & Co., 290.

3. *Administrator—Authority of—Foreign State.*—The authority of an administrator does not extend beyond the limits of the Government granting the letters, unless the foreign law controlling the assets permits it.—*Id.*

4. *Administration—Executor de son tort—Contracts, enforcement of—Third parties.*—Third parties cannot call upon an administrator to carry out contracts, which they have made with an administrator *de son tort* of the same estate.—Barr v. Cubbage, 404.

See, Bills and Notes, 5, 7, 8.

ADVERTISEMENT ; See, Mortgages and Deeds of Trust, 2.

AGENCY.

1. *Agent—Notice to—Principal, when bound.*—Notice given to an agent while his agency exists, and referring to business coming within the scope of his

AGENCY Continued.

authority, is notice to the principal.—Hayward v. National Insurance Company of Hannibal, 181.

2. *Agent—Statements, when made—Principal, liability of.*—Statements of agents do not bind their principals, unless made at the time of the transaction so as to form part of it.—Golson v. Ebert, 260.

3. *Contracts—Interpretation of—Agents.*—A. professing to act for himself and for B. and C., makes a contract under seal with D. agreeing, that he will do certain work for D., for which D. agrees to pay him, and the contract concludes, that the undersigned bind themselves in the penal sum of one thousand dollars for its fulfillment. A. and D. alone sign the contract. Upon a suit for not doing the work, *held*, that A. alone was liable.—Einstein v. Holt, 340.

4. *Agency—Authority, proof of—Written instruments—Habit and course of business.*—The authority of an agent is not necessarily to be proved by written instruments, but may be proved by the habit and course of business of the principal.—Franklin v. The Globe Mutual Life Insurance Company, 461.

5. *Corporations—Officers—Acts of—Authority presumed.*—The authority of the chief officer of a corporation to perform certain official acts, may be proven by co-temporaneous or subsequent evidence of special authority.—Washington Mutual Fire Insurance Company v. St. Mary's Seminary, 480.

6. *Agents—Public or private—Unauthorized acts—Ratification.*—An agent, whether public or private, cannot ratify his own authorized acts.—State, *ex rel.* Blakeman v. Hays, 578.

7. *Agents, public—Authority of—Knowledge of.*—Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity.—*Id.*

See, Brokers; Conveyances, 1.

APPEARANCE; See, Practice civil, 1; Practice civil, Trials, 5.

ARBITRATION AND AWARD.

1. *Arbitration, statute concerning—Equitable defenses—Partiality of arbitration.*—Where A and B submitted their dispute to arbitration under the statute an award was made, but no attempt appears to have been made to procure a judgment on the award, and suit was brought upon the award within two months after it was made, and the defendant alleged in his answer the prejudice of one of the arbitrators, unknown to him at the time of the submission.—Held, that the allegation was a good equitable defense.—Hyeronimus v. Allison, 102.

2. *Arbitrations—Partiality—Courts of equity.*—Courts of equity will relieve against the partiality or corruption of arbitrators, especially under the statute of this State.—*Id.*

3. *Arbitration—Statute, motions under—Loss of papers—Award, suit on.*—Where the papers containing the submission and award were destroyed and no opportunity apparently afforded defendant to move to vacate the award, *Held*, that the defendant's answer to a suit on the award, might well be treated, as in the nature of such motion, or as objections upon a motion to confirm.—*Id.*

4. *Deeds of composition—Releases—Validity—Creditors.*—Deeds of composition and releases, in the absence of fraud towards any creditors, are legitimate and should be upheld by the Courts.—Diermeyer v. Hackman, 282.

ASSAULT AND BATTERY; See Practice, Criminal, 14.

ATTACHMENT.

1. *Attachment—Garnishment—Non-resident defendant—Jurisdiction, etc.*—Delivery of a copy of the writ to a defendant residing in another state (W. S., 1009, § 181,) and garnishment of a judgment debtor of defendant upon an attachment issued against defendant, is sufficient to give the court trying the cause jurisdiction till the attachment proceedings are determined.—Orear v. Clough, 55.

See Garnishment.

ATTORNEY, CIRCUIT; See Circuit Attorney.
ATTORNEY GENERAL; See Officers, 1.

B.

BAILMENT; See Agency; Banks and Banking; Carriers; Fraudulent conveyances, 1.

BANKS AND BANKING.

1. *Alienation of property—By-law of bank prohibiting—Restraint of trade.*—The right of alienation is an incident of property, and a by-law of a bank prohibiting the alienation of stock therein, or putting restrictions thereon, is void, as being in restraint of trade.—Moore v. The Bank of Commerce, 377.

2. *Estoppel—Bank stock, loan on—Officer of bank, representations of.*—An officer of a bank informed a party applying to the bank, that he might safely loan money on a pledge of their stock to the owner of it, taking the stock as pledge: *Held*, that the bank was, after the loan was made, estopped to forfeit the stock for alleged dues.—*Id.*

See Trusts and Trustees, 1.

BILLS AND NOTES.

1. *Bills and notes—Assignment before maturity—Notice—Equitable defenses.*—In order to let in equitable defenses against a note assigned before maturity, express notice of the consideration, before the assignment was made, is not indispensable; but it will be sufficient if the circumstances are of such a strong and pointed character as necessarily to cast a shade upon the transaction and to put the holder on inquiry.—Hamilton v. Marks, 78.

2. *Limitations, statute of—Note—Partial Payment—Indorsement.*—An indorsement of partial payment, made on a note by the holder without the privity of the maker, is not of itself sufficient evidence of a payment to repel a defense created by the Statute of Limitations; but such indorsement made by the consent of the maker is sufficient.—Phillips v. Mahan, 197.

3. *Bills of Exchange and Promissory Notes—Protest—Indorsers—Due diligence—Questions of Law and of Fact.*—When the facts are agreed on, due diligence in making a demand of payment is a question of law; when the facts are not agreed on, it is a mixed question of law and fact.—Fourth National Bank of St. Louis, v. Heuschen, et al., 207.

4. *Bills of Exchange and Promissory Notes—Protest—Partnership, dissolution of—Notice.*—A partnership, though dissolved, is still in existence so far as the question of demand and protest of their negotiable paper, and notice thereof is concerned; and a demand made on one of the partners, or made at a place which one of the partners said was their place of business, is good.—*Id.*

5. *Bills of exchange and promissory notes—Consideration—Appointment of an administrator—Public policy.*—A promissory note, whereof the consideration is an agreement to procure a responsible party and have him appointed administrator of an estate, is void as against public policy.—Porter v. Jones, 399.

6. *Bills and notes—Transfer before maturity—Consideration, when may be inquired into.*—An indorsee of negotiable paper before maturity is presumed to be the owner in good faith and for value, unless there are circumstances antecedent to, or attendant on, the act of transfer, amounting to either actual notice to the holder, of fraud, illegality or failure of consideration, or to such a combination of suspicious circumstances, as would in legal contemplation afford ground for the presumption that the purchaser of the paper was aware, at the time of its acquisition, of some equity between the original parties thereto, which should have prevented its purchase by him.—Horton v. Bayne, 531.

7. *Bills and Notes—Partnership—Death of partner—Renewals—Liability of estate of deceased.*—A. died, leaving the firm of which he was a member indebted to B. which debt was witnessed by notes. These notes were afterwards given up, and other notes in renewal thereof taken, but the creditor stipulated, that such

BILLS AND NOTES. Continued.

action should not discharge the estate of A. *Held*, that A.'s estate was still liable, either as on a balance of the original debt, or of the surrendered notes. —Boatmens Savings Institution v. Mead, Adm'r. 543.

8. *Bills and notes—Renewal by surviving partner—Protest.*—A., B. and C., while partners, indorsed certain promissory notes. A. died before the notes matured. At the maturity of the notes, part of the amount was paid by the maker, and renewal notes were given for the remainder, which were indorsed by B. and C. with the former firm name, and the original notes were surrendered up to the makers and destroyed. The original notes were not protested, nor were any steps taken to hold A.'s estate upon them. *Held*, that A.'s estate would not be held liable for the amount unpaid on the original notes, nor on the renewal notes; and it makes no difference, that the holder of the notes had an understanding with B. and C., that the renewal notes were not taken in satisfaction of the original debt.—Central Savings Bank v. Mead, Admr., 546.

See Carriers, 1; Limitations, 1; Partnership, 2; Practice, civil—Pleading, 1, 8, 9, 14.

BILLS OF LADING; See Carriers, 1.

BONDS.

1. *Bonds—Escrow—Execution of—Principal parties.*—Where A. procured the signature of B. as his surety on a bond, B. signing it on condition that C.'s signature should also be procured to it by A.; but C.'s signature was never procured, but his name was forged on the bond; in a suit by the obligee on the bond; *Held*, that there was no delivery by B., and the bond was void as to him.—Linn County and The State v. Farris, *et al.*, 75.

2. *Bonds—Creditors—Sureties—Fraud of principal in execution.*—When a principal procures the signatures of sureties to his bond by fraud, of which the creditor is ignorant, the remedy of the sureties is against the principal, and not against the creditor. *Id.*

See Bonds, appeal; Bonds, indemnity; Bonds, official; Justices' Courts, 1, 2.

BONDS, APPEAL; See Justices' Courts, 1, 2; Landlord and Tenant, 6.

BONDS, INDEMNITY; See Constable, 2, 3, 4.

BONDS, OFFICIAL.

1. *Bonds, official—Sureties, liability of—Implicaton.*—The engagement of a surety on an official bond is entered into with reference to the law which defines the duty of the officer, and cannot be extended by implication.—City of St. Louis v. Sickles, Executrix, 122.

2. *Bonds, official—Suits—Evidence—Account—Public and private transactions.* —A. the marshal of St. Louis County, sued B., the Clerk of St. Louis Criminal Court, and his sureties on his official bond, for fees collected by B. as such clerk, belonging to A. A. offered in evidence a written statement of their accounts, official and private, given to him by B. *Held*, that this statement was admissible in evidence, if the official and individual items could be separated therein, and that the court should instruct the jury to disregard the individual items.—State v. Dailey, *et al.*, 601.

BROKERS.

1. *Contracts—Commissions—Brokers.*—A. wishing to borrow money on some property, applied to B., who agreed to find a lender, and to have the title examined, and would charge $200, which would include the expenses of examining the title and his commission; A. gave B. his title deeds at the time; a defect being found in the title, the lender refused to loan the money, and B. sued A. for the $200. *Held*, that B. should have first examined the title before applying for a loan, and was A's agent for that purpose, as well as for procuring a loan, and was not entitled to his commissions.—Budd *et al.* v. Zoller, 238.

2. *Contracts—Commissions—Brokers.*—A broker employed to effect a loan, is entitled to his commission when he has found a lender, who has the money and who approves of the security, unless his rights are varied by special con-

BROKERS. Continued.

tract. There is always an implied condition that the borrower will show a good title. *Id.* PER EWING and WAGNER, Judges, dissenting.

3. *Contracts—Real estate agents—Commissions, when entitled to.*—If property is put into the hands of a real estate agent to sell, he is entitled to his commission, if the sale is brought about by his advertisements or exertions, or if he introduces the purchaser, or discloses his name to the seller, and through such introduction or disclosures the sale is effected, even though the sale may be made by the owner.—Tyler v. Parr, 249.

4. *Broker—Real estate—Commissions—Default of owner.*—A broker, who negotiates a sale of real estate, is entitled to his commissions, though, owing to the default of his employer, the sale is never effected.—Carpenter v. Rynders, 278.

See Revenue, 4.

BURDEN OF PROOF; See Practice, civil—Trials, 2, 3.

C.

CARRIERS.

1. *Common Carriers—Liability—Bills of lading—Goods not received—Third parties.*—The owners of a boat are not rendered liable at the suit of a third party, in consequence of a bill of lading having been issued for goods as shipped on board that boat by one apparently having authority therefor, to the consignor named in said bill of lading, who negotiated a bill of exchange drawn on the consignee to such third party, who purchases and has indorsed to him for value, the bill of exchange, on the faith and on the security of the bill of lading which is also transferred to him, without any knowledge or notice of lack of authority on the part of him, who signed the bill of lading, or that the goods recited in the bill of lading were never shipped.—Louisiana National Bank of New Orleans, vs. Laveille, *et al.*, 380.

2. *Common carriers—Liability—Special contract—Negligence.*—A common carrier by a special contract can limit his common law liability, but cannot exempt himself from the consequences of his own negligence.—Ketchum vs. The American Merchants Union Express Company, 390.

3. *Common carriers—Breakage—Negligence—Prima facie case.*—Proof of breakage of goods in the hands of the common carrier makes a *prima facie* case of negligence against him, and the burden of proof is thrown on him to show due care and vigilance. *Id.*

4. *Common carrier—Action against, for goods lost—Value of goods—Evidence.*—In the trial of a suit against a carrier for the value of a chest and its contents, which were enumerated in the petition, a witness, after stating the value in detail of a number of articles, was asked if she knew the value of the chest and its contents, and answered that she did, and named the value at $400.00. She also stated that besides the articles she had specifically mentioned, there were some others which she had not named. This statement was not made in answer to any question asked her, but in connection with her testimony relating to the contents of the chest. *Held*, that an objection to her testimony on the grounnd, that there was evidence tending to show that there were more goods in the chest than were sued for, was not well taken.—Seyfarth, vs. St. Louis & Iron Mountain Railroad Company, 449.

5. *Common carrier—Suit against, for goods lost—Evidence of value.*—In a suit against a common carrier for the value of household goods lost, it is competent for plaintiff to ask a witness as to value, whose opinion is based upon a knowledge of the articles lost and not on his skill as an expert, his opinion as to their value in bulk. The plaintiff is not obliged to restrict the examination to the value of each article, and in that way arrive at their total value; nor is it incumbent on him to show the process by which the conclusion of the witness is reached. *Id.*

CIRCUIT ATTORNEY, See Practice, Criminal, 1,13.

CLERK, CIRCUIT.

1. *Circuit Clerks—Fees—Excess of, over salary—Must be paid into county treasury whenever collected.*—The fees collected by the clerk of a Circuit Court, which are in excess of the salary allowed by law, must be paid into the county treasury whether they are collected before or after his term of office expires.—In re Lewis, 550.

COLOR OF TITLE. See Land and Land titles, 3, 4, 5,

COMPOSITION. See Arbitration and Award, 4.

CONFLICT OF LAWS. See Administration, 3; Contracts, 4.

CONSIDERATION. See Bills and Notes; Contracts.

CONSTABLES.

1. *Constable—Deputy—Replevin—Judical process.*—An action for the claim and delivery of personal property may be brought against the deputy constable, who has seized it by virtue of an execution in his hands against a third party.—Criley v. Vasel, 445.

2. *Constable—Indemnity bond—Claim and delivery of personal property.*—After an execution of an indemnity bond to a constable for property seized by him on execution, the claimant of the property has no remedy against the constable.—State, to the use of Grassmuck, v. Platt, *et al.*, 466,

3. *Practice, civil—Actions—Indemnity bond, suit on—Replevin against constable—Bar—Damages.*—A constable seized property by virtue of an execution in his possession, and took an indemnity bond. B., claiming this property, brought an action of replevin against the constable, wherein he was defeated. He afterwards sued on the indemnity bond. *Held*, that, inasmuch as the question of ownership was not involved in the replevin suit, that suit was no bar to the suit on the indemnity bond; and, inasmuch as the constable elected in the replevin suit to take the value of the property, that the plaintiff in the suit on the bond, was damaged at least to that amount. *Id.*

4. *Practice, civil—Replevin—Judgment—Constable—Proceeds.*—When a constable recovers judgment in a replevin suit brought against him for property seized by him on execution, and elects to take the value thereof, the value so obtained, takes the place of the property, and must be disposed of by him accordingly. He must pay off the original execution and costs, and hold the balance for the bondsmen against whom the judgment is rendered. *Id.*

CONSTITUTION OF MISSOURI.

1. *Statutes—Constitution—Public instruction—Sugar Tree Grove Academy, act of incorporation of—Repeal by implication.*—Sections 5 and 6 of the charter of the Sugar Tree Grove Academy, being inconsistent with the present constitution of the State and the acts passed pursuant thereto, are repealed by implication.—Waller v. Everett 57.

2. *Laws in restraint of traffic or alienation of property—Constitutionality—Police regulations.*—A law, which unnecessarily and oppressively restrains a citizen from engaging in any traffic, or disposing of his property, is void, even though passed under the specious pretext of a police regulation; but if it is passed in good faith, for the purpose of preserving the public health, and abating nuisances, and contains only the necessary limitations, it is valid. [Sess. Acts 1872, p. 265, and ordinance of City of St. Louis relating thereto, affirmed—State v. Fisher, 174.

See Corporations, 2; St. Louis City of, 1, 2; Statute Constitution of, 1.

CONTRACTS.

1. *Contracts—Commissions—Brokers.*—A. wishing to borrow money on some property applied to B., who agreed to find a lender, and to have the title examined, and would charge $200, which would include the expenses of examining the title and his commission; A. gave B. his title deeds at the time. A defect being found in the title, the lender refused to loan the money, and B. sued A. for the $200. *Held*, that B. should have first examined the title before ap-

CONTRACTS. Continued.

plying for a loan, and was his agent for that purpose, as well as for procuring a loan, and was not entitled to his commissions.—Budd, *et al.*, v. Zoller, 238.

2. *Contracts—Commissions—Brokers.*—A broker, employed to effect a loan, is entitled to his commission, when he has found a lender, who has the money and who approves of the security, unless his rights are varied by special contract. There is always an implied condition that the borrower will show a good title.—*Id.* PER EWING and WAGNER, Judges, dissenting.

3. *Contracts—Real estate agents—Commissions, when entitled to.*—If property is put into the hands of a real estate agent to sell, he is entitled to his commission, if the sale is brought about by his advertisements or exertions, or if he introduces the purchaser or discloses his name to the seller, and through such introduction or disclosures the sale is effected, even though the sale may be made by the owner.—Tyler v. Parr, 249.

4. *Contracts—Made in one country, and ratified in another—What law controls.*—If a contract is made in one State and to be fulfilled there subject to ratification by a party in another State, when ratified the contract is to be interpreted by the laws of the first State.—Golson v. Ebert, 260.

5. *Broker—Real estate—Commissions—Default of owner.*—A broker who negotiates a sale of real estate is entitled to his commissions, though, owing to the default of his employer, the sale is never effected.—Carpenter v. Rynders, 278.

6. *Partners—Articles of Agreement—Interpretation of.*—In the articles of copartnership it was agreed, that in the case of the death of one partner, the other should have the right to recover the fourth part of a certain chattel and against that he shall pay to the deceased the sum of one thousand dollars, after the deceased shall have paid all his debts which he owes to the partnership up to the date. *Held*, that this clause gave the surviving partner an option of purchase, and did not import an absolute covenant or engagement.—Scharringhausen v. Luebsen, 337.

7. *Contracts—Interpretation of—Agents.*—A. professing to act for himself and for B. and C., makes a contract under seal with D. agreeing, that he will do certain work for D., for which D. agrees to pay him, and the contract concludes, that the undersigned bind themselves in the penal sum of one thousand dollars for its fulfillment. A. and D. alone sign the contract. Upon a suit for not doing the work; *Held*, that A. alone was liable.—Einstein v. Holt 340.

8. *Practice, civil—Pleadings—Contracts—Common counts.*—Where work is done or services rendered under a special contract, and nothing remains to be done, except for the defendant to pay the money agreed on, the plaintiff can sue on the common counts in assumpsit.—Stout v. St. Louis Tribune Co., 342.

9. *Laws—Contracts, obligations of—Parties in interest—Third parties.*—If a law impairs the obligations of contracts, the persons injuriously affected thereby are the proper parties to apply to set it aside; third parties have no standing in court for such purposes.—City of St. Louis v. Shields, 351.

10. *Evidence—Contracts in writing—Parol testimony affecting.*—Parol testimony is inadmissible to vary the *language* of a written contract; no other *words* are to be added to it, or substituted in its stead.—Huse, et al. v. McQuade, 388.

11. *Presumptions—Contracts—Violation of law.*—When a contract can be performed without any violation of law, it is the legal presumption that it will be so performed, or at least there is no presumption that it will not be so performed.—Sheffield, et al. v. Balmer, et al., 474.

12. *Contracts—Promissory notes—Signature—Descriptio personæ—Ambiguity—Parol evidence.*—If there is an ambiquity in a contract in writing, or a promissory note, in the description of the person, parol evidence is admissible to afford an explanation thereof, and to show upon whom the responsibility of the note shall rest, and for whose benefit the contract was made; and if a contract

CONTRACTS. Continued.

and a note refer in their terms to each other, both may be taken together in construing them.—Washington Mutual Fire Insurance Company v. St. Mary's Seminary, 480.

13. *Corporations—Officers—Act of Authority presumed.*—The authority of the chief officer of a corporation to perform certain official acts, may be proven by co-temporaneous or subsequent evidence of special authority.—*Id.*

14. *Contracts—Covenants, dependent—Consideration.*—Covenants in a contract are dependent, which are mutual and go to the entire consideration.—Butler, Admr. v. Manny, 497.

See, Accord and Satisfaction, 1; Administration, 4; Bonds; Constitution of Missouri, 2; Conveyances; Frauds, Statute of, 1; Insurance, Fire; Insurance, Life; Landlord and Tenant, 1; Practice, civil—Pleading, 12, 16; Practice civil, Trials, 17.

CONVEYANCES.

1. *Deed—Judgment—Variance not fatal, when.*—A Sheriff's deed is not invalid because it recites a judgment against Smith & Haliburton, while the record in the cause shows a judgment against Jacob Smith and Wesley Haliburton. —Union Bank v. McWharters, 34.

2. *Lands and land titles—Conveyances—Husband and wife—Joint-tenancy.*—A conveyance of real estate in fee to husband and wife creates a tenancy by the entirety with the right of survivorship.—Garner v. Jones, 68.

3. *Conveyances—Interpretation—Intention—Verbal arrangement.*—When a grantor in a deed uses apt words showing what it was his intention to convey, that effect will be given to the deed, regardless of any verbal position or arrangement. [Rutherford v. Tracy, 48 Mo. 325, affirmed.]—Bruensmann v. Carroll, 313.

4. *Conveyances—Deed executed without the grantee being named—Parol authority to fill in name of grantee—Validity.*—A deed regularly executed in other respects, with a blank left therein for the name of the grantee, and placed in that condition in the hands of a third person, with verbal authority, but no authority under seal, from the person who executed it to fill up the blank in his absence and deliver the deed to the person whose name is inserted as grantee, when so filled out and delivered is a valid deed.—Field v. Stagg, 534.

See, Fraudulent Conveyances.

CORPORATION.

1. *Practice, civil—Note—Suit on—Allegation that plaintiff is a corporation, when necessary.*—In a suit by a corporation on a promissory note given to it in its corporate capacity by defendant, it is not ground of demurrer that plaintiff failed to allege that it was, at the date of the note, a corporation, etc. Defendant having entered into the contract with the company in its corporate name, thereby admitted it to be duly constituted a body politic and corporate. —Farmers and Merchants Insurance Co., v. Needles, 17.

2. *Corporations—Stockholders—Constitution—Individual Liability—Repeal—Obligation of contracts.*—The amendment to the Constitution of Missouri adopted Nov. 8th, 1870, which repealed the 6th section of Art. 8th of the then existing Constitution, whereby stockholders in corporations became liable for double the amount of stock they owned, and declared that all laws, ordinances and provisions, inconsistent with said amendment should be forever abolished and of no effect, did not have the effect of removing the individual liability of one who was a stockholder when the debt was incurred and also when the execution was issued against the corporation. Giving this amendment such effect would make it impair the obligation of contracts, because first, the creditor contracted with the corporation on the faith of the individual responsibility of the stockholders, and secondly, the remedy is so seriously affected that the obligation is impaired.—Provident Savings Institution v. The Jackson Place Skating and Bathing Rink, 552.

3. *Corporations—Double liability of stockholders—Transfer of stock.*—A stockholder cannot escape his liability under the former double liability clause

CORPORATION. Continued.

of the constitution of the state, by transferring his stock in the corporation to an insolvent, or with a view of exonerating himself from his personal responsibility.—Provident Savings Institution, v. The Jackson Place Skating and Bathing Rink, 557.

4. *Corporations—Dissolution—Insolvency—Stockholders, liability of.*—A corporation which is insolvent, and has been adjudicated a bankrupt under the United States Bankrupt Act, is dissolved; and a dissolution so brought about is sufficient to authorize creditors to bring suits against its stockholders under the statute (W. S., 293, § 22,) without joining the company in the suit.—State Savings Association of St. Louis, v. Kellogg, et al., 583.

5. *Corporations—Insolvency—Suits against shareholders—Suit against corporation, not necessary, when.*—The statute, which provides that stockholders shall not be personally liable for any debt contracted by the corporation, unless suit shall be brought against the corporation within one year after the debt becomes due, (W. S., 336 § 13) does not apply when the corporation has been dissolved by bankruptcy. Such suit against the corporation would be a useless form, and the law will not enforce an act which would be frivolous. *Id.*

See Banks and Banking; Contracts, 13; Corporations, municipal.

CORPORATIONS, MUNICIPAL.

1. *Laws—Legislature—Power to alter or repeal—Municipal Corporations.*—Legislatures can alter or repeal at will all acts affecting or giving power to municipal corporations, unless the language of the act is too clear to admit of a doubt that they parted with that power.—City of St. Louis, v. Shields, 351.

See St. Louis, City of; Schools and school lands, 3.

COSTS; See Garnishment, 2; Practice, Civil, 3; Practice, Criminal, 1, 13.

COUNTER-CLAIM; See Practice civil, Pleading, 12.

COURTS, COUNTY; See Revenue, 1, 2, 3, 5; Schools and School lands, 1, 3, Statute, construction of, 4.

COURT OF CRIMINAL CORRECTION; See Practice, Criminal, 9.

CRIMES AND PUNISHMENTS.

1. *Practice, criminal—Criminal prosecution—Language, loud and abusive*—Disturbing the peace of a single individual by loud and abusive language, is not a criminal offense.—State v. Schlottman, 164.

See Practice Criminal.

CRIMINAL LAW, See Crimes and Punishments; Practice Criminal.

CUSTOM.

1. *Custom—To be binding must be actually known, or universal and notorious.*—A person is not bound by a custom unless he has personal knowledge thereof, or it is so notorious, universal and well established that his knowledge thereof would be conclusively presumed.—Walsh v. Mississippi Valley Transportation Co., 434.

D.

DAMAGES.

1. *Practice civil, pleadings—Allegations—Damages—Remoteness.*—Where in a petition for conversion of a carpet bag containing plaintiff's clothes, plaintiff, as one cause of action, alleged that in consequence of such conversion, he, a laboring man, was compelled to work in unsuitable clothes, which were damaged thereby. *Held*, that such an allegation could only be made and proved as special damages under the count for conversion, and such damages were too remote.—Saunders v. Brosius, 50.

2. *Servants—Negligence of co-servants—Master, liability of.*—The master is not liable for injuries received by a servant, caused by the negligence of a co-servant, unless the latter is not possessed of the ordinary skill and capacity for

DAMAGES. Continued.

the business intrusted to him, and unless his employment is attributable to the want of ordinary care on the part of the master.—Brothers v. Cartter, *et al.*, 372.

3. *Master—Delegation of his authority—Injury to servant.*—When a master delegates to a superintendent the power to employ and discharge servants and to provide and remove material, which duties adhere to him as master, he thereby makes himself liable for any injuries sustained by his servants, caused by the lack of care, or negligence of such superintendent. *Id.*

4. *Damages for personal injuries—Negligence—Contributory negligence*—In an action for damages for personal injuries the rule is, that although the plaintiff may have failed to exercise ordinary care and diligence and such failure contributed in a remote degree to the injury, yet if defendant was guilty of negligence, which was the immediate cause of the injury, and with the exercise of ordinary prudence and care by defendant the injury could have been prevented, defendant is liable. But if plaintiff could have avoided the injury by the exercise of ordinary care and prudence, defendant is not liable. And this principle is not confined to any particular class or classes of persons.—Walsh v. M. V. Trans. Co., 434.

5. *Practice, civil— Petition— Amendment when relates back— Limitations.*—When an amendment to a petition in a suit for damages, (W. S. 519, § 2) sets up no new matter or claim, but is merely a variation of the allegations affecting a demand already in issue—as where by the original petition a party was assigned to the wrong side of the case, and the mistake was corrected—it relates to the commencement of the suit, and the running of the statute of limitations is arrested at that point. (Buel v. St. Louis Transfer Co., 45 Mo. 562, affirmed.)—Crockett, *et al.*, v. St. Louis Transfer Co. 457.

6. *Damages—Suit for, under statute—Father and mother as plantiff, divorce of.*—In a suit for damages under the statute, (W. S. 520, § 2,) the father and mother of the deceased child may join as plaintiffs although divorced prior to the accrument of the cause of action. (Buel v. St. Louis Transfer Co., 45 Mo. 562, affirmed.) *Id.*

7. *Practice, civil—Pleading—Statement of cause of action.*—The petition alleged that the defendant, a railroad company, negligently and carelessly ran over and killed some of the cattle of the plaintiff, and that the same was done at a part of the road that was not enclosed by a lawful fence, and that was not a public road crossing. *Held*, that the petition set out a good cause of action.—Aubuchon v. St. Louis & I. M. R. R. Co., 522.

See Constables, 3; Mechanics' Lien, 1; Mortgages and Deeds of Trust, 2; Practice, civil, Pleadings, 12.

DECLARATIONS; See Estoppel; Evidence.

DEFAULT; See Practice, civil, Pleading.

DESCRIPTIO PERSONÆ; See Contracts, 12.

DISTURBING THE PEACE; See Crimes and Punishments, 1; Practice, Criminal, 9.

DIVORCE; See Husband and Wife; Practice, Criminal, 10.

DOWER.

1. *Dower—Married woman not estopped from claiming, when.*—The fact that a married woman was made a party to the record in a suit for the partition of lands of her former husband, and for the assignment of her dower therein, will not estop her from afterward denying and contesting the validity of those proceedings.—Crenshaw v. Creek, et al., 98.

DURESS; See Practice, civil, Actions, 1.

E.

ENGINEER, CITY; See St. Louis, City of, 1, 3.

EQUITY.

1. *Practice, civil—Equity, bills in—Parties—Courts, County, acts of—Tax-payers rights of—Attorney General.*—Tax-payers can file bills in equity to annul illegal acts of County Courts, when such acts will increase the taxation, and the State is not a necessary party to such suits.—Newmeyer, et al., v. Mo. & Miss. R. R. Co. et al., 81.

2. *Practice, civil, pleading—Equity—Fraud—Account—Multiplicity of suits, &c.—Jurisdiction.*—Where A. filed a bill in equity, alleging that he had demised premises to B. with the agreement that near the end of the lease. A. and B. were each to appoint an assessor, and they a third, who should unanimously assess the value of the improvements and the yearly rental, and that A. should then have the privilege of buying the improvements or should grant a renewal of the lease at the rental so fixed, and with the old covenants, and that B. had always appointed partial assessors so that no unanimous decision could be obtained, and had occupied the premises for a number of years since the expiration of the original lease without paying any rent; *Held*, that the bill was proper, and equity would entertain the suit on account of fraud, account, and the prevention of the multiplicity of suits.—Biddle v. Ramsey, 153.

3. *Equity—Cloud on title—Possession, lack of.*—A party not in possession cannot go into equity to have a cloud removed from his title as against one in possession holding under a deed.—Clark v. Covenant M. Ins. Co., 272.

4. *Equity—Cloud on title—Record—Defect apparent.*—When the opposite party can only claim title through the record, and a defect appears upon the face of such record, there is no cloud on the title such as will call for the exercise of the equitable power of the court.—*Id.*

5. *Equity—Cloud on title—Record—Extrinsic evidence.*—Where the opposite party can claim title only through the record, and there is no defect apparent on the record, but such defect may be cured by extrinsic evidence, particularly if that evidence depends upon oral testimony to establish it, there is a cloud on the title.—*Id.*

See Arbitration and Award, 2; Bills and Notes, 1; Execution, 1 2; Judgments, 1; Land and Land Titles, 7, 8, 9; Trusts and Trustees.

ESCROW; See Bonds, 1, 2.

ESTOPPEL.

1. *Estoppel—Creditors—Partnership—Debt of one partner—Deeds of composition.*—A co-partnership conveyed all their assets to trustees for the benefit of their creditors, in pursuance of a resolution adopted at a meeting of the creditors. At that meeting a creditor of one of the partners was present, and by consent of all, his debt was admitted as a partnership debt. *Held*, that the creditors were afterwards estopped to deny that that debt was a partnership debt.—Diermeyer v. Hackman, 282.

2. *Estoppel—Declarations of owner.*—A. did blacksmithing for B. and procured a judgment against B. for the same, part of which was for shoeing a horse, which B.'s son brought to his shop to be shod, telling A. that the horse belonged to his father. The constable under this judgment levied on this horse. The son sued the constable on his bond for levying on the horse, claiming it as his own. *Held*, that the son was not estopped from denying his former assertion.—State v. Laies, 396.

See Banks and Banking, 2.

EVIDENCE.

1. *Evidence—Proof of contents of writing.*—The statement by a witness that a letter is lost or mislaid, and that to the best of his belief he has destroyed it, is sufficient foundation for evidence of its contents.—Meyers v. Russell, 26.

2. *Evidence—Husband and Wife—Witnesses—Communications.*—Communications between husband and wife are privileged and neither can testify concerning such.—Berlin v. Berlin, 151.

3. *Evidence—Divorce—Witnesses—Husband and Wife—Competency.*—Husbands and wives are competent witnesses against each other in divorce suits. [Moore vs. Moore, 51 Mo., affirmed.] *Id.*

EVIDENCE Continued

4. *Evidence—Witnesses—Opinion, when admissible.*—Opinions of witnesses are admissible, when the subject of inquiry is so indefinite and general in its nature as not to be susceptible of direct proof, or if the witness has had the means of personal observation, and the facts and circumstances upon which he bases his conclusion are incapable of being detailed so intelligibly as to enable any one but the observer himself to form an intelligent conclusion from them. —Eyerman vs. Sheehan, *et al.*, 221.

5. *Evidence—Prices current—Secondary evidence.*—A price current of the prices in a city is only secondary evidence, and not the best evidence obtainable.—Gilsom Ebert, 260.

6. *Evidence—Contracts in writing—Parol testimony affecting.*—Parol testimony is inadmissible to vary the *language* of a written contract; no other *words* are to be added to it, or substituted in its stead.—Huse, *et al.*, v. McQuade, 388.

7. *Common Carrier—Action against, for goods lost—Value of goods—Evidence.* —In the trial of a suit against a carrier for the value of a chest and its contents, which were enumerated in the petition, a witness after stating the value in detail, of a number of articles was asked if she knew the value of the chest and contents, and answered that she did, and named the value at $400.00. She also stated that besides the articles she had specifically mentioned, there were some others which she had not named. This statement was not made in answer to any question asked her, but in connection with her testimony relating to the contentsof the chest. *Held*, that an objection to her testimony on the ground that there was evidence tending to show that there were more goods in the chest than were sued for, was not well taken.—Seyfarth v. St. Louis & Iron M. R. R. Co. 449.

8. *Common Carrier—Suit against for goods lost—Evidence of value.*—In a suit against a common carrier for the value of household goods lost, it is competent for plaintiff to ask a witness as to value, whose opinion is based upon a knowledge of the articles lost, and not on his skill as an expert, his opinion as to their value in bulk. The plaintiff is not obliged to restrict the examination to the value of each article, and in that way arrive at their total value; nor is it incumbent on him to show the process by which the conclusion of the witness is reached.—*Id.*

9. *Bonds, official—Suits—Evidence—Account—Public and private transactions.* —A., the Marshal of St. Louis County, sued B., the Clerk of St. Louis Criminal Court, and his sureties, on his official bond for fees collected by B. as such clerk, belonging to A. A. offered in evidence, a written statement of their accounts, official and private, given to him by B. *Held*, that this statement was admissible in evidence, if the official and individual items could be separated therein. and that the court should instruct the jury to disregard the individual items, —State v. Dailey, et al., 601.

See Agency, 4; Carriers, 3; Contracts, 12, 13; Custom, 1; Land and Land titles, 6, 8, 9, 10; Practice, civil, Pleading, 14; Practice, civil—Trials, 2, 8, 11, 12, 16, 17, 18, 20, 21; Practice, Criminal, 2, 3, 12; Practice, Supreme Court, 3, 4, 5, 6; Statute, construction of, 9; Wills, 1.

EXECUTIONS.

1. *Execution—Land, repeated sales of, under—Difference in bids—Suit for, etc.*— Where land exposed for sale under an execution is bid off, but the money is not paid over, and the land is re-sold under the same execution, to the same bidder, but for a less sum, if the amount finally paid is sufficient to satisfy the judgment and costs, the defendant in execution will be entitled to maintain a suit in equity for the difference in the bids.—Strawbridge v. Clark, 21.

2. *Lands, sale of—Successive liens on—Surplus funds—Belong to whom.*— Where there are several liens on a tract of land, and it is sold under one of them, the surplus after paying the lien under which it was sold, belongs in equity to the next subsequent liens, in the order of their priority.—*Id.*

8. *Sheriff—Execution, return of—Liability for interest—Demand.*—A sheriff is

EXECUTIONS. Continued.

not liable for interest upon the return of an execution, until a demand is made on him.—Burgess v. Cave, 43.

4. *Sheriff—Levy by—Excessive.*—A sheriff levied on a steamboat, worth about forty thousand dollars, by virtue of an execution for $109. *Held*, that the levy was excessive; that he might have satisfied his execution by levying on a small part of the furniture.—Silver, *et al.* v. McNeil, 518.

See Constable, 1, 2, 3, 4; Estoppel, 2; Lease, 1, 2, 3.

EXPERTS; See Evidence.

F.

FEES; See Clerk, circuit; Circuit Attorney.

FENCES; See Damages, 8; Trespass, 1.

FORCIBLE ENTRY AND DETAINER.

1. *Practice, civil—Forcible entry and detainer—Title.*—In an action of forcible entry and detainer, the title to the land is not involved, but a forcible entry with or without title is forbidden.—Dilworth v. Fee, *et al.*, 130.

2. *Forcible entry and detainer, statute of—Appeal bond—Judgment against sureties.*—The statute concerning forcible entry and detainer does not contemplate a judgment on the appeal bond against the principal and sureties, as in ordinary appeals from justices of the peace. If the bond be not complied with, it may be sued on, but a summary judgment in the same suit has not been provided for.—Gunn v. Sinclair, 327.

FRAUD; See Fraud, Statute of; Fraudulent Conveyances.

FRAUDS, STATUTE OF.

1. *Contracts—Privity—Default of another—Statute of frauds.*—An agreement by A. to pay B. for work to be done for C. is not a contract to answer for the default of another, and need not be in writing.—Sinclair v. Bradley, 180.

FRAUDULENT CONVEYANCES.

1. *Fraudulent conveyances—Personal property—Change of possession—Bailees, notification to.*—A sale of personal property then in the hands of a bailee, followed by a notification to the bailee of such sale, is a sufficient change of possession as against the creditors of the vendor.—How v. Taylor, 592.

See Partnership, 4.

G.

GARNISHMENT.

1. *Practice, civil—Garnishment—Construction of statute—Third parties interested.*—The provision of the statute (Revised Laws 1855, p. 260,) that if the garnishee show in his answer and declare his belief, that the debt owing by him to defendant or the supposed property in his hands has been sold or assigned to a third party, and the plaintiff disputes such facts, the court shall make an order upon the supposed vendee or assignee to appear, and sustain his claim, is directory.—McKittrick v. Clemens, et al., 160.

2. *Garnishment—Allowance to garnishee cannot be made after term at which judgment is rendered*—An allowance to a garnishee is a part of the costs in the case and cannot be granted after the term at which final judgment is rendered, either in the lower or appellate court.—Ladd. et al. v. Couzins, 454.

See Attachment, 1.

GUARDIAN AND WARD; See Infants.

H.

HUSBAND AND WIFE.

1. *Lands and land titles—Conveyances—Husband and wife—Joint tenancy.*—A conveyance of real estate in fee to husband and wife creates a tenancy by the entirety with the right of survivorship.—Garner v. Jones, 68.

2. *Evidence—Husband and wife— Witnesses—Communications.*—Communications between husband and wife are privileged and neither can testify concerning such.—Berlin v. Berlin, 151.

3. *Evidence—Divorce—Witnesses—Husband and wife—Competency.*—Husbands and wives are competent witnesses against each other in divorce suits.—[Moore v. Moore, 51 Mo., affirmed.] *Id.*

4. *Damages—Suit for, under statute—Father and mother as plaintiff, divorce of.*—In a suit for damages under the statute, (W. S., 520, § 2.) the father and mother of the deceased child may join as plaintiffs although divorced prior to the accrument of the cause of action. (Buel v. St. Louis Transfer Co., 45 Mo. 562, affirmed.)—Crockett v. St. Louis Transfer Co., 457.

5. *Practice, civil—Parties—Husband to be joined with wife when the marriage has taken place after the commencement of the suit—Amendment, when made.*—When a suit has been begun by a woman who afterwards marries, the petition may be amended so as to make her husband a joint plaintiff; and such amendment under the statute (W. S., 1034,) may be made at any time before final judgment.—*Id.*

See Dower; Infants, 1; Insurance, Life, 1; Judgments, 3; Lease, 2; Practice, Criminal, 10.

I.

INFANTS.

1. *Infant—Sustenance—Step-father—Liability—In loco parentis.*—Merely by virtue of his marriage a man is not bound to provide for the children of his wife by a former husband, but if he holds them out to the world as a member of his own family, he stands *in loco parentis* to them, and incurs the same liability with respect to them, that he is under to his own children.—St Ferdinand Loretto Academy v. Bobb, 357.

INJUNCTION; See Mortgages and Deeds of Trust, 1.

INSTRUCTIONS; See Practice, civil—Trials.

INSURANCE, FIRE.

1. *Contracts—Conditions, waiver of—Insurance, policies of.*—A condition in a policy of insurance that any other insurance on such property should avoid that policy, unless the assent of the insurer to such increased insurance was indorsed on the original policy, may be waived by acts or positive declarations, and the insurer may be estopped to set up such forfeiture, when by a course of dealing or by open actions the insurer has induced the assured to pursue a policy to his detriment. [Hutchins v. Western Insurance Company, 21 Mo. 97, overruled.]—Hayward, assignee of Lennon v. National Insurance Co., 181.

INSURANCE, LIFE.

1. *Insurance—Policies—Contracts of marriage.*—A woman engaged to be married to a man has an insurable interest in his life.—Chisholm v. Nat. Capitol Life Ins. Co., 213.

2. *Contracts—Insurance—Premium, prompt payment of—Waiver.*—Though a contract of insurance requires prompt payment of the premium or the policy will be forfeited, yet the insurers may waive this condition by a habit of receiving the premium after it is due.—Thompson v. St. Louis Mutual Life Ins. Co., 469.

INTERPLEA; See Administration, 1.

J.

JUDGMENTS.

1. *Judgments, assignment of—Statute—Equitable title.*—The statutory mode of assigning judgments is cumulative, and does not prevent a party from making an equitable assignment in any other lawful way.—Burgess v. Cave, 43.

2. *Judgments, assignment of—Execution—Sheriff, notice of assignment.*—If a sheriff with an execution in his hands, receive notice of the assignment of the judgment, he must hold the money when collected, for the use of the assignee. —*Id.*

3. *Judgments, assignment of—Husband and Wife—Power of disposition.*—The husband is the proper party to receive payment of a judgment in favor of himself and wife, or the money may be paid to the sheriff to be applied by him in favor of the husbands's execution creditor.—*Id.*

See Partnership, 5; Practice, civil, 2; Practice, civil,—Appeal, 1; Practice, Civil,—New Trials, 2; Practice, Civil,—Pleadings, 5; Sheriff's Sales, 4.

JURISDICTION; See Administration, 1; Attachment, 1; Practice, Civil, 1; Practice, Criminal, 9; Receiver, 1.

JURY; See Practice, civil—Trials, 2, 4; Practice, Criminal, 5, 6.

JUSTICES' COURTS.

1. *Justices' Courts—Appeal bond—Default, motion to set aside.*—When a judgment by default before a Justice of the Peace is appealed from, but no motion is made to set aside the default, the appeal bond given in such case is void.—Garnet v. Rodgers, *et al.*, 145.

2. *Justices' Courts—Appeal bonds—Default—Motion to set aside.*—Bonds given for appeals before Justices of the Peace, where judgment was given by default but no motion was made to set aside the default, are *coram non judice* and void. [Garnet v. Rodgers, p. 145 affirmed.] Kinear v. Shands, *et al.*, 326.

3. *Justices' Courts—Appeal—Time, computation of—Sunday.*—In computing the time limited for perfecting appeals from justices' courts, Sundays are to be included as other days. The principle of *dies non* does not apply in such cases.—Patchin v. Bonsack, 431.

See Landlord and Tenant, 3, 5, 6; Practice, Civil—Trials, 18.

JUSTICE OF THE PEACE; See Practice, Criminal, 9.

L.

LAND COMMISSIONER; See St. Louis, City of, 6, 7.

LAND AND LAND TITLES.

1. *Land and land titles—Conveyances—Husband and wife—Joint tenancy*—A conveyance of real estate in fee to husband and wife creates a tenancy by the entirety with the right of survivorship.—Garner v. Jones, 68.

2. *Land and land titles—Vendor's lien—Taking other security—Fraud.*—When a purchaser by fraud induces the vendor to take worthless security for the unpaid purchase money for land, the vendor does not thereby waive his lien on the land.—Skinner v. Purnell, 96.

3. *Lands and land titles—Trespassers—Title by occupancy—Color of title.*—A mere trespasser can acquire title only to that portion of a tract which he occupies; to maintain an action against parties trespassing on another part of the tract, he must have actual possession of a part of the tract with color of title to the whole.—Rannels v. Rannels, *et al.*, 108.

4. *Lands and land titles—Limitations, statute of—Occupancy—Color of title—Writings and acts in pais.*—Whatever title would authorize a party in posses-

sion of a part of a tract to maintain an action against a wrong-doer on the balance of the land, would be a sufficient color of title under the Statute of Limitations against the real owner; and this color of title may be created by an instrument of writing or by an act *in pais* without writing.—*Id.*

5. *Land and land titles—Color of title—Acts in pais.*—Where a man made a verbal gift of a defined tract of land to his sister, had it surveyed for her, and put her into the possession under this survey and the description in his own deed, *Held*, she was in possession of the whole tract under color of title.—*Id.*

6. *Presumptions of law—Real estate, ownership of—Possession.*—The general presumption is, nothing appearing to the contrary, that the party who has the exclusive legal title to real estate, has also the possession.—Clark, *et al.* v. The Covenant Mutual Life Ins. Co., 272.

7. *Equity—Cloud on title—Possession, lack of.*—A party not in possession cannot go into equity to have a cloud removed from his title as against one in possession holding under a deed.—*Id.*

8. *Equity—Cloud on title—Record—Defect apparent.*—When the opposite party can only claim title through the record, and a defect appears upon the face of such record, there is no cloud on the title such as will call for the exercise of the equitable powers of the court.—*Id.*

9. *Equity—Cloud on title—Record—Extrinsic evidence.*—Where the opposite party can claim title only through the record, and there is no defect apparent on the record, but such defect must be proved by extrinsic evidence, particularly if that evidence depends upon oral testimony to establish it, there is a cloud on the title.—*Id.*

10. *Evidence—Deed—Title—Grantor's interest.*—In showing title under a deed, or a cloud on a title through a deed, it is necessary to show that the grantor had some sort of title, either real or apparent.—*Id.*

11. *Practice, civil, pleadings—Equity, bill in—Multifariousness.*—A bill in equity is multifarious, when distinct and independent matters are improperly joined; as several matters perfectly distinct and unconnected united in one bill against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill.—*Id.*

12. *Land and land titles—Acts of Congress of June 13th, 1812, and May 26th 1824, granting commons to the villages of St. Louis and Carondelet—Reservation of commons—Decision in case of Carondelet vs. St. Louis, (1 Black., 179.)* Under the acts of Congress of June 13th, 1812, and May 26th, 1824, the city of Carondelet claimed certain lands as commons, and it became the duty of the President of the United States to reserve said lands from entry or sale; and said lands were thus reserved from entry or sale from the passage of said act of June 13th, 1812, till the decision of the United States Supreme Court in the case of Carondelet vs. St. Louis, decided at December Term 1861, of that court. Proper entries of such reservation were made at the local land office of St. Louis which gave due notice to all persons, thereof. It is thus established that said lands were reserved from entry or sale down to the said December Term 1861, of the United States Supreme Court.—Shepley, *et al.*, v. Cowan, *et al.*, 559.

13. *Land and land titles—Act of Congress of September 4th, 1841—Act of the General Assembly of Missouri accepting grant—Selection of land under said acts—Reservation.*—Under section 8 of an act of Congress approved September 4th, 1841, entitled "an act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," it was provided that there should be granted to certain States, Missouri among the number, five hundred thousand acres of land for purposes of internal improvements, and provided that the selection of such land should be made from any public land, except such as was or might be reserved from sale by any law of Congress or proclamation of the President of the United States. The General Assembly of Missouri passed certain acts accepting the five hundred thousand acres of land and providing for its selection. In 1849 the Governor of Missouri selected for

LAND AND LAND TITLES Continued.

plaintiff a part of the land which under the act of Congress of June 13th, 1812 had been reserved from entry or sale, and which was so reserved until December, 1861. *Held*, that said land being so reserved from entry or sale at the date of such selection was not of the character intended to be granted in the 8th section of the act of Congress of September 4th, 1841, and was not embraced in that section, and therefore such selection was null and void and no title could pass thereby to the State of Missouri, and the State could therefore pass none to the plaintiff.—*Id.*

14. *Land and land titles—Statute, construction of—Granting words.*—A statute which provides that "there shall be granted," etc., does not have the effect of making a grant. No title passes by the force of the act itself, the words imply that some other act is to be passed, before the Government parts with the fee to lands which it is provided shall be granted.—*Id.*

15. *Land and land titles—Lists certified by the Commissioner of the General Land Office—Land reserved—Act of Congress of Aug. 3rd, 1854.*—The act of Congress of Aug. 3rd, 1854, provided that "in all cases where lands have been or shall be hereafter granted by any law of Congress to any one of the several States or Territories, and when said law does not convey the fee simple title of such lands or require patents to be issued therefor, the lists of such lands which have been certified by the Commissioner of the General Land Office under the seal of said office, shall be regarded as conveying the fee simple of all the lands embraced in said lists that are of the character contemplated by such acts of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be null and void," etc. Under these provisions of said act, the Commissioner of the General Land Office issued under the seal of his office a certificate that the State had selected under the 8th section of the act of Congress of September 4th, 1841, certain land, which was reserved from entry or sale under the act of June 13th, 1812, and was reserved from entry or sale at the time the certificate was dated, and which had been selected by the State of Missouri under the law of September 4th, 1841, which excluded from such selection land which had been reserved from entry or sale. *Held*, that such certificate of the commissioner was null and void and conveyed no title.—*Id.*

16. *Limitation, statute of—Not only bars but transfers titles—Does not run against the Government.*—The statute of limitations is a statute of repose. It not only bars, but may transfer a title. The statute does not run against the Government.—*Id.*

See Conveyances; Execution, 1, 2; Forcible entry and detainer, 1; Sheriffs' sales, 3, 4.

LANDLORD AND TENANT.

1. *Leases—Assignment—Rent.*—One, who receives an absolute assignment of a lease, is liable to the lessor for rent.—Willi v. Dryden, 319.

2. *Landlord and tenant—Monthly tenancy—Notice of termination.*—In order to terminate a tenancy from month to month, the required notice must be given at or before the termination of the current month.—Gunn *et al.* v. Sinclair, 327.

3. *Constable—Sales—Leaseholds having less than three years to run.*—A leasehold having less than three years to run, can be sold under an execution from a Justice of the Peace. *Id.*

4. *Husband and Wife—Leasehold, ownership of—Sale in invitum.*—A leasehold, of which the wife is merely the legal owner, belongs by marital right to the husband, and can be sold *in invitum* proceedings against him. *Id.*

5. *Landlord and tenant—Leasehold—Purchase by tenant.*—When a tenant purchases the leasehold of his landlord at an execution sale against his landlord, he thereby extinguishes the tenancy. [W. S., 880, § 15.] *Id.*

6. *Forcible entry and detainer, statute of—Appeal bond—Judgment against sure-*

LAW LIBRARY OF University of MICHIGAN.

LANDLORD AND TENANT Continued.

ties.—The statute concerning forcible entry and detainer, does not contemplate a judgment on the appeal bond against the principal and sureties, as in ordinary appeals from justices of the peace. If the bond be not complied with, it may be sued on, but a summary judgment in the same suit has not been provided for. *Id.*

See Forcible Entry and Detainer.

LEASE.

1. *Constable—Sales—Leaseholds having less than three years to run.*—A leasehold having less than three years to run, can be sold under an execution from a Justice of the Peace.—Gunn v. Sinclair, 327.

2. *Husband and Wife—Leasehold, ownership of—Sale in invitum.*—A leasehold of which the wife is merely the legal owner, belongs by marital right to the husband, and can be sold *in invitum* proceedings against him.—*Id.*

3. *Landlord and tenant—Leasehold—Purchase by tenant.*—When a tenant purchases the leasehold of his landlord at an execution sale against his landlord, he thereby extinguishes the tenancy. [W. S. 880, § 15.]—*Id.*

See Landlord and Tenant.

LEGISLATURE.

1. *Laws—Legislature—Power to alter or repeal—Municipal Corporations.*—Legislatures can alter or repeal at will all acts affecting or giving power to municipal corporations, unless the language of the act is too clear to admit of a doubt that they parted with that power.—St. Louis v. Shields, 351.

See Statute, construction of, 1, 2, 3.

LEVY; See Executions.

LICENSE; See Revenue, 4, 5, 6, 7; Statute, construction of, 4.

LIENS, MECHANICS'; See Mechanics' Liens.

LIENS, VENDORS'; See Vendors' Liens.

LIMITATIONS.

1. *Statute of Limitations—Bills and notes—Suits thereon by a stranger.*—When the statute of limitations is appealed to as a defense against a note, evidence that a suit was instituted thereon within the ten years by a stranger to the note, is inadmissible.—Tiffin v. Leabo, 49.

2. *Limitations, statute of—Sheriff—False return—When the statute begins to run.*—Where a sheriff falsely returns that he has served the defendant to a suit, he thereby commits a fraud against such defendant, and the Statute of Limitations does not begin to run from the time of such return. (2 W. S., p. 920, § 24.)—Foley v. Jones, 64.

3. *Lands and land titles—Limitations—Statute of—Occupancy—Color of title—Writings and acts in pais.*—Whatever title would authorize a party in possession of a part of a tract to maintain an action against a wrong-doer on the balance of the land, would be a sufficient color of title under the Statute of Limitations against the real owner; and this color of title may be created by an instrument of writing or by an act *in pais* without writing.—Rannels v. Rannels, 108.

4. *Limitations, statute of—Note—Partial Payment—Indorsement.*—An indorsement of partial payment, made on a note by the holder without the privity of the maker, is not of itself sufficient evidence of a payment to repel a defense created by the Statute of Limitations; but such indorsement made by the consent of the maker is sufficient.—Phillips v. Mahan, 197.

5. *Limitations, statute of—Trusts, express—Denial of trust.*—In express technical trusts, the statute of limitations does not begin to run, until the trust is denied by some open act of the trustee.—Smith v. Ricords, 581.

6. *Limitations, statute of—Trusts, implied—Right of action.*—In implied trusts, the statute of limitations begins to run as soon as the party has a right to mmence a suit to declare and enforce the trust. *Id.*

See Land and Land Titles, 16; Practice, civil—Pleading, 17.

LOST WRITING ; See Evidence, 1.

M.

MANDAMUS ; See Practice, civil—Pleading.

MASTER AND SERVANT ; See Damages, 2, 3.

MECHANICS' LIENS.

1. *Mechanics' Liens—Judgment—Removal of buildings—Action for prevention—St. Louis County.*—If the owner of property in the County of St. Louis prevents the purchaser of a building thereon, under a judgment on a mechanic's lien, from removing the building, his proper remedy is an action of damages against the owner of the property.—Seibel v. Siemon, 363.

2. *Mechanics' lien—To what attaches.*—A mechanic's lien only attaches to such property and fixtures as form part of the realty. (W. S., 907-8, §§ 1-4)—Haeussler v. Mo. Glass Co., 452.

MONEY PAID.

1. *Duress—Payment of money—When recoverable.*—Payment of money upon an illegal and unjust demand, when the party is advised of all the facts, can only be considered involuntary, when it is made to procure the release of the person or property of the party from detention, or where the other party is armed with apparent authority to seize upon either, and the payment is made to prevent it.—Wolfe, *et al.* v. Marshal, *et al.*, 167.

MORTGAGES AND DEEDS OF TRUST.

1. *Trusts and Trustees—Deed of Trust, sale under—Injunction—Damages, release of—Cestui que trust.*—In a suit for damages on an injunction bond, given to prevent the sale of land under a deed of trust, the *cestui que trust* is the only person damaged by the injunction, and he alone can execute a release for the damages.—O'Reilly v. Miller, 210.

2. *Mortgages and Deeds of Trust—Sales—Advertisement—St. Louis Legal Record—Publication in, imparted notice.*—The St. Louis County Legal Record and Advertiser was a newspaper, for the purpose of publishing judicial notices, and an advertisement in that paper of a sale under a Deed of Trust, imparted notice, and satisfied the requirement of the deed. (Kellogg v. Carrico, 47 Mo. 157, affirmed.)—Benkendorf v. Vincenz, *et al.*, 441.

3. *Mortgages and Deeds of Trust—Sale under Deed of Trust—Sale of property in a lump, not per se sufficient to invalidate sale.*—The mere fact that property conveyed by Deed of Trust is sold under the deed, in gross, is not *per se* sufficient to invalidate the sale. There must be some attendant fraud or unfair dealing or abuse of the confidence reposed in the trustee, in order to obtain the aid of a court of equity to divest a title acquired under such a sale.—*Id.*

4. *Trustee's sale—Personal property—How attacked.*—The sale of a trustee under a deed of trust of personal property, can only be attacked by a suit in equity to set it aside by the grantor in the deed of trust, or one claiming under him.—Haeussler v. Missouri Glass Company, 452.

N.

NEGLIGENCE; See Carriers, 2, 3; Damages; Practice, civil—Trials, 7.

NOTARY PUBLIC.

1. *Notary Public—Certificate—Alteration—Seal.*—The seal of a Notary Public attesting his certificate, need not be impressed upon wax ; it is sufficient if it be impressed upon the paper.—Meyers v. Russell, 26.

See Practice, criminal, 14.

NUISANCES; See Constitution of Missouri, 2.

O.

OFFICERS.

1. *Statute, construction of—Quo Warranto—Attorney General, information by—Act of Feb. 21, 1873.*—The act of Feb. 21, 1873, prohibiting the drawing or paying of a warrant for the salary attached to a State office, when said office is contested or disputed by two or more persons claiming title thereto, or by information in the nature of *quo warranto*, does not apply to an information filed by the attorney general *ex-officio*.—State, *ex rel.*, v. Clark, 508.

2. *Officers, State—Commission—Salary—Liability—Ouster.*—He, who has the commission, is entitled to the emoluments of the office, until the State by proper proceedings revokes his authority; and the party properly entitled to the office has no recourse against the State for payments so made, but his recourse is against the person who so received the emoluments.—*Id.*

See Bonds, Official; Clerk, Circuit; Constable; Contracts, 13; Courts, County; Justices of the Peace; Notary Public; Revenue, 2, 3; St. Louis, city of, 1; Schools and School Lands, 3.

OPINIONS; See Evidence, 4.

ORDINANCES, CITY; See Statute, construction of, 6, 7, 8, 9.

P

PARTITION; See Dower, 1.

PARTNERSHIP.

1. *Estoppel—Creditors—Partnership—Debt of one partner—Deeds of composition.*—A co-partnership conveyed all their assets to trustees for the benefit of their creditors, in pursuance of a resolution adopted at a meeting of the creditors. At that meeting a creditor of one of the partners was present, and by consent of all, his debt was admitted as a partnership debt. *Held*, that the creditors were afterwards estopped to deny that that debt was a partnership debt.—Diermeyer v. Hackman, 282.

2. *Partnership—Notes—Dissolution—Power of one partner to bind the others.*—One partner after dissolution of the firm, with notice thereof to the creditor, cannot bind the other partners by making a note in the name of the firm, even in renewal of a note of the firm.—Moore, *et al.*, v. Lackman, 323.

3. *Partners—Articles of agreement—Interpretation of.*—In the articles of co-partnership it was agreed, that in the case of the death of one partner, the other should have the right to recover the fourth part of a certain chattel and against that he shall pay to the deceased the sum of one thousand dollars, after the deceased shall have paid all his debts which he owes to the partnership up to the date. *Held*, that this clause gave the surviving partner an option of purchase, and did not import an absolute covenant or engagement.—Scharringhausen, Adm. v. Luebsen, 337.

4. *Sales—Personal property—Partnership—Change of possession.*—A. being in partnership with B. & C., sold his interest in the firm to B. & C. but remained with the new firm as their employee; *Held*, that no further change of possession was necessary to render the sale valid as to the creditors of A.—Criley, *et al.* v. Vasel, 445.

5. *Practice, civil—Slander—Partners—Joint judgment—Individual suit—Bar.*—A joint judgment, procured by partners in business in a slander suit, is no bar to a several suit by one of the partners on the same cause of action.—Duffy v. Gray, 528.

6. *Bills and Notes—Partnership—Death of partner—Renewals—Liability of estate of deceased.*—A. died, leaving the firm of which he was a member indebted to B. which debt was witnessed by notes. These notes were afterwards given up, and other notes in renewal thereof taken, but the creditor stipulated,

PARTNERSHIP Continued.

that such action should not discharge the estate of A. *Held*, that A.'s estate was still liable either as on a balance of the original debt, or of the surrendered notes.—Boatmen's Savings Institution v. Mead, Admr. 543.

8. *Bills and notes—Renewal by surviving partner—Protest.*—A., B. and C., while partners indorsed certain promissory notes, A. died before the notes matured. At the maturity of the notes, part of the amount was paid by the maker, and renewal notes were given for the remainder, which were indorsed by B. and C., with the former firm name, and the original notes were surrendered up to the makers and destroyed. The original notes were not protested, nor were any steps taken to hold A.'s estate upon them. *Held*, that A.'s estate would not be held liable for the amount unpaid on the original notes, nor on the renewal notes; and it makes no difference that the holder of the notes had an understanding with B. and C., that the renewal notes were not taken in satisfaction of the original debt.—Central Savings Bank v. Mead, Admr. 546.

See Bills and Notes, 4.

PAYMENT; See Accord and Satisfaction, 1.

POSSESSION; See Land and Land Titles, 1, 2; Partnership, 4.

PRACTICE, CIVIL.

1. *Practice, civil—Defendant, appearance of to have case put at foot of docket, etc.*—The appearance of a party for the purpose of having his case put at the foot of the docket gives the court such jurisdiction as to authorize the rendition of a personal judgment against him.—Orear v. Clough, 55.

2. *Practice, civil—Orders, nunc pro tunc—Subsequent terms—Record.*—Where a Court fails to make an order, it cannot be made at a subsequent term *nunc pro tunc*; but where the clerk fails to enter judgment, or enters up the wrong judgment, the Court may at any time order the proper entries to be made, but the record should show the facts which authorize the entries.—Priest, Adm'r., of Smarr v. McMaster, 60.

3. *Practice, civil—Circuit Court—Costs, security for—Time allowed.*—When by order of court a party is allowed a certain number of days wherein to file security for costs, such order refers to calendar days, and not days of the term of the court. Swainson, *et al.* v. Bishop, 227.

PRACTICE, CIVIL,—ACTIONS.

1. *Duress—Payment of money—When recoverable.*—Payment of money upon an illegal and unjust demand, when the party is advised of all the facts, can only be considered involuntary, when it is made to procure the release of the person or property of the party from detention, or where the other party is armed with apparent authority to seize upon either, and the payment is made to prevent it. Wolfe, *et al.* v. Marshal, *et al.*, 167.

See Corporations, 4, 5; Mechanics' Liens, 1; Partnership, 5.

PRACTICE, CIVIL—APPEAL.

1. *Judgment not final—Appeal dismissed.*—An appeal brought up without final judgment will be dismissed.—State v. Martindale, 31.

See Justices' courts, 1, 2, 3; Practice, civil—Trials, 18; Practice, Supreme Court.

PRACTICE, CIVIL—NEW TRIALS.

1. *New trial—Objections, not appearing—Result.*—Objections not raised on motion for new trial will not be considered by the Supreme Court.—Brady v. Connelly, 19.

2. *Practice, civil—New trial, motion for—Verdict—Arrest of judgment, motion in.*—An objection to a general verdict on a petition containing two counts, that it does not specify the amount found due on each count, will not be considered by this court, if it was not alleged in the motion for a new trial or in arrest.—Chapman v. White, 179.

3. *Practice, civil—New trial, motion for—Objections presented—Consideration by Supreme Court.*—Objections to the action of the court below, must be pre-

PRACTICE CIVIL—NEW TRIALS Continued.

sented to that court on a motion for a new trial, or they will not be considered by the Supreme Court. Burns v. Whelan, 520.

4. *Practice, civil—New trials—Motions.*—The motion for a new trial must be made within four days after the trial, if the term shall so long continue, and if not, then before the end of the term.—Moran v. January, 523.

See Practice, civil—Trials, 12.

PRACTICE, CIVIL—PARTIES.

1. *Practice, civil—Petition — Amendment, when relates back — Limitations.*—When an amendment to a petition in a suit for damages, (W. S., 519, § 2.) sets up no new matter or claim, but is merely a variation of the allegations affecting a demand already in issue—as where by the original petition a party was assigned to the wrong side of the case, and the mistake was corrected—it relates to the commencement of the suit, and the running of the statute of limitations is arrested at that point. (Buel v. St. Louis Transfer Company, 45 Mo., 562, affirmed.)—Crockett, *et al.* v. St. Louis Transfer Co., 457.

2. *Damages—Suit for, under statute—Father and mother as plaintiff, divorce of.*—In a suit for damages under the statute, (W. S., 52, § 2,) the father and mother of the deceased child may join as plaintiffs although divorced prior to the accrument of the cause of action.—(Buel v. St. Louis Transfer Co., 45 Mo. 562, affirmed.)—*Id.*

3. *Practice, civil— Parties—Husband to be joined with wife when the mariage has taken place after the commencement of the suit—amendment, when made.*—When a suit has been begun by a woman who afterwards marries, the petition may be amended so as to make her husband a joint plaintiff; and such amendment under the statute, (W. S., 1034,) may be made at any time before final judgment.—*Id.*

See Contracts, 9; Dower, 1.

PRACTICE, CIVIL—PLEADING.

1. *Practice, civil—Note—Suit on—Allegation that plaintiff is a corporation, when necessary.*—In a suit by a corporation on a promissory note given to it in its corporate capacity by defendant, it is not ground of demurrer that plaintiff failed to allege that it was, at the date of the note, a corporation, etc. Defendant having entered into the contract with the company in its corporate name, thereby admitted it to be duly constituted a body politic and corporate.—Farmers & Mechanics' Insurance Co. to use, etc. v. Needles, 17.

2. *Practice, civil—Counts—Verdict, etc.*—The rule that where a petition contains more than one count, there should be a separate verdict on each count, only applies where the counts are for separate and distinct causes of action.—Brady v. Connelly, 19.

3. *Practice Civil, pleadings—Allegations—Damages—Remoteness.*—Where in a petition for conversion of a carpet bag containing plaintiff's clothes, plaintiff as one cause of action, alleged that in consequence of such conversion, he, a laboring man, was compelled to work in unsuitable clothes, which were damaged thereby. *Held*, that such an allegation could only be made and proved as special damages under the court for conversion, and such damages were too remote.—Saunders v. Brosius, 50.

4. *Practice, civil, Pleading—Mandamus, alternative writ of—Petition—Statement, of case.*—In a petition for, and in the alternative writ of mandamus, the relator should so set forth the facts upon which he relies for the relief sought, that the defendant may be able to take issue on them.—State *ex rel.* v. Everett, *et al.*, 89.

5. *Practice, civil— Pleading—Answer—Demurrer—Judgment by default.*—It is irregular to enter judgment by default after answer and demurrer to the answer. Louthan v. Caldwell, 121.

6. *Practice civil—Pleadings—Equity—Fraud—Account—Multiplicity of suits, &c.—Jurisdiction.*—Where A. filed a bill in equity, alleging that he had demised premises to B. with the agreement that near the end of the lease, A.

PRACTICE,—CIVIL—PLEADINGS—Continued.

and B., were each to appoint an assessor, and they a third, who should unanimously assess the value of the improvements and the yearly rental, and that A. should then have the privilege of buying the improvements or should grant a renewal of the lease at the rental so fixed, and with the old covenants, and that B. had always appointed partial assessors so that no unanimous decision could be obtained, and had occupied the premises for a number of years since the expiration of the original lease without paying any rent; *Held*, that the bill was proper, and equity would entertain the suit on account of fraud, account, and the prevention of a multiplicity of suits.—Biddle v. Ramsey, 153.

7. *Practice civil Defenses, withdrawal of*—A party to a suit may at any time withdraw any defense set up by him.—Boatmens' Savings Institution v. Forbes, *et al.*, 201.

8. *Practice, civil, Pleadings—Notes—Sureties—Allegations.*—When a party sets up as a defense against a note that he signed it as surety, he must state the name of the principal. *Id.*

9. *Practice civil, Pleadings—Sureties—Notes, extension of—Payments—Presumptions.*—Where in the plaintiff's petition on a note it is alleged that payments were made after maturity, and the defendant claiming to be a surety alleges that the note was extended without his consent, but does not deny the payments, such failure to deny the payments is a presumption that they were made with his knowledge and consent, and will amount to a ratification of the agreement to extend the time of payment.—*Id.*

10. *Practice, civil, Pleading—Answer—Traverse of allegations of petition.*—When the new matter set up in the answer amounts to a complete defense to the suit, it is not necessary to traverse any of the allegations of the petition.—Kortzendorfer v. City of St. Louis, 204.

11. *Practice, civil, pleadings—Equity, bill in—Multifariousness.*—A bill in equity is multifarious, when distinct and independent matters are improperly joined; as several matters perfectly distinct and unconnected, united in one bill against one defendant; or the demand of several matters of a distinct and independent nature against several defendants in the same bill.—Clark v. Covenant Mut. Life Ins. Co., 272.

12. *Practice, civil, pleadings—Contracts—Counter-claims.*—If the suit is founded on a cause of action connected in any way with a contract, a counter-claim arising out of any other contracts between the same parties, though sounding in damages, may be set up.—Empire Transportation Co. v. Boggiano, *et al.* 294.

13. *Practice,civil—Pleadings—Verdict—Replication, nunc pro tunc.*—If, where a replication was required, it was not filed, yet a court should not for that cause set aside a verdict, but should allow a replication of general denial to be filed *nunc pro tunc* to aid the verdict.—Foley, *et al.* v. Alkire, *et al.* 317.

14. *Practice,civil—Pleading—Averments—Common law—Code—Notes—Demand and Protest.*—An averment of due demand and protest of a note was sustained at common law by proof of facts showing an excuse according to the law merchant, or dispensing with actual demand and showing due diligence, but it is not so by our Code. The facts proved must correspond with the averments.—Pier et al. v. Heinrichoffen, *et al.*, 333.

15. *Practice, civil—Pleadings — Code — Allegations —Facts constitutive.*—Every fact which the plaintiff must prove to maintain his suit, is *constitutive* in the sense of the Code and must be alleged. *Id.*

16. *Practice, civil—Pleadings— Contracts—Common counts.*—Where work is done or services rendered under a special contract, and nothing remains to be done, except for the defendant to pay the money agreed on, the plaintiff can sue on the common counts in assumpsit.—Stout v. St. Louis Tribune Co., 342.

17. *Practice, civil—Petition—Amendments, when relate back—Limitations.*—When an amendment to a petition in a suit for damages, (W. S., 519, § 2,) sets up no new matter or claim, but is merely a variation of the allega-

PRACTICE, CIVIL—PLEADING. Continued.

tions affecting a demand already in issue—as where by the original petition a party was assigned to the wrong side of the case, and the mistake was corrected—it relates to the commencement of the suit, and the running of the statute of limitations is arrested at that point. (Buel v. St. Louis Transfer Company, 45 Mo., 562, affirmed.)—Crockett, et al. v. St. Louis Transfer Co., 457.

18. *Practice, civil—Pleadings—Statement of cause of action.*—The petition alleged that the defendant, a railroad company, negligently and carelessly ran over and killed some of the cattle of the plaintiff, and that the same was done at a part of the road that was not inclosed by a lawful fence, and that was not a public road crossing. *Held*, that the petition set out a good cause of action.—Aubuchon v. St. Louis & Iron Mountain Railroad Co., 522.

19. *Practice civil—Trials—Pleading—Confession and avoidance—Burden of proof.*—The burden of proof is on a defendant who in his answer confesses and avoids the allegations of the petition.—St. Louis Tow Company v. The Orphans Benefit Ins. Co., 529.

See Arbitration and Award, 1, 3; Equity, 1; Garnishment, 1; Practice, Civil— Trials, 8, 14.

PRACTICE, CIVIL—TRIALS.

1. *Practice, civil,—Counts—Verdict, etc.*—The rule that where a petition contains more than one count, there should be a separate verdict on each count, only applies where the counts are for separate and distinct causes of action.—Brady v. Connelly, *et al.*, 19.

2. *Jury—Notes of evidence given to, etc.*—It would undoubtedly be improper to permit a jury to take the attorney's notes of evidence without the consent of the parties or their attorneys. But where such consent is given, the circumstances cannot be afterward urged as an objection to the verdict.—Baker v. Rice, 23.

3. *Practice, civil—Instructions, scope of.*—Instructions should be given with reference to the whole case, and not with reference only to a few of the facts involved.—Raysdon v. Trumbo, 35.

4. *Practice, civil—Trial—Jury, waiver of.*—Where defendant objected to going into the case, and took no further action in the case except to watch its progress and the clerk's entry was, "neither party requiring a jury the case is submitted to the court." *Held* that this was a sufficient waiver of trial by jury.—Town v. Moore, 118.

5. *Practice, civil—Parties—Appearance of—Trial.*—A party must either appear at a trial and abide the consequences or not appear. He cannot occupy an ambiguous position, partly appearing and partly not appearing.—*Id.*

6. *Practice civil—Trial—Instructions—Answer—Mechanic's lien.*—Instructions in a trial in a mechanic's lien suit, alleging that the work was done under two contracts. and that the first is barred, although the answer had admitted that all the work was done under one contract, are inadmissible.—Westhus v. Springmeyer, *et al.*, 220.

7. *Practice,civil—Trials—Instructions—Negligence.*—When the facts are so clear and decided, that the inference of negligence is irresistible, it is the duty of the judge to decide; but when the facts, or the inference to be drawn from them, are in any degree doubtful, the whole matter should be submitted to the jury under proper instructions.—Barton v. St. Louis & I. M. R. R. Co., 253.

8. *Practice, civil—Trials—Pleadings—Evidence—Instructions.*—If the evidence shows a different state of facts from those contained in the pleadings, and a party to the suit desires instructions in accordance with those facts, he must first amend his pleadings by leave of court.—Budd, *et al.* v. Hoffheimer, 297.

9. *Practice, civil—Trials—Instructions, not covering all the issues.*—An instruction, calling for a verdict yet not covering all the issues in the case, is objectionable, unless cured by other instructions.—*Id.*

10. *Practice, civil—Trials—Instructions—Amount of verdict.*—When a party

PRACTICE, CIVIL—TRIALS. Continued.

sues under a contract for the amount of compensation fixed by the contract, are instruction that the verdict be for that amount, if the jury find for the plaintiff, is correct.—*Id.*

11. *Practice, civil—Trial—Evidence—Link in the chain of testimony.*—Evidence that may form a link in the chain of testimony should be admitted, though not sufficient in itself to establish the defense, and although no disclosure is made at the time of an intention to prove the additional facts to establish the defense.—*Id.*

12. *Practice, civil—Trials—Evidence, conflicting—Admissible testimony rejected—New trials.*—When in a case where the evidence is conflicting, the court excludes admissible testimony, but afterwards upon re-assembling after a recess, decides to admit it, but the witness does not appear, and it does not appear that the party had any opportunity to supply this testimony, the motion for a new trial should be granted.—*Id.*

13. *Practice civil—Trials—Instructions—Misleading.*—Instructions, which are likely to confuse and mislead the minds of the jury, should not be given.—Clarke v. Kitchen, 316.

14. *Practice, civil—Trials—Verdict—Pleadings.*—A verdict against the admissions of the pleadings cannot be suffered to stand.—Foley, *et al.* v. Alkire, *et al.*, 317.

15. *Practice, civil—pleadings—Verdict—Replication, nunc pro tunc.*—If where replication was required, it was not filed, yet a court should not for that cause set aside a verdict, but should allow a replication of general denial to be filed *nunc pro tunc* to aid the verdict.—*Id.*

16. *Practice, civil—Trials—Evidence—Testimony, anticipative—Offer to prove*—When evidence is offered, which is inadmissible except by the proof of other facts, and there is no offer, or intimation given of an intention to prove such other facts, it is not error to reject the evidence.—Pier v. Heinrichoffen, 333.

17. *Practice, civil—Trials—Evidence—Quantum meruit—Contract produced—Liability of defendant.*—If a plaintiff sues on a *quantum meruit*, and yet the contract is produced on a trial, if any fact necessary to establish defendant's liability under the contract is not proved, the plaintiff cannot recover.—Stout v. St. Louis Tribune Co., 342.

18. *Practice, civil—Trials—Evidence — Contracts — Justices courts — Circuit Court—Allegata—Probata*—In trials in the Circuit Court on appeals from Justices Courts in actions of assumpsit, the evidence must prove the allegations neces sarily made if the action had been first brought in the Circuit Court, where-pleadings are required.—*Id.*

19. *Practice, civil—Trials—Instructions must not assume facts not in evidence*—Instructions which assume the existence of facts which are not in evidence are improper.—Washington Mutual Fire Ins. Co. v. St. Mary's Seminary, 480.

20. *Practice, civil—Trials—Evidence, introduction of.*—The introduction of evidence in chief, by the plaintiff after the close of defendant's evidence, is a matter largely in the discretion of the trial court, but it might be error if it worked injustice.—Burns v. Whelan, 520.

21. *Practice civil—Trials—Instructions—Facts in evidence*—Instructions should always be framed with reference to the facts in evidence.—Porter v. Harrison, 524.

22. *Practice, civil—Trials—Instructions taken together—Whole case*—.It is sufficient if the instructions taken together present the whole case in a way that is not calculated to mislead.—*Id.*

23. *Practice, civil—Trials—Pleadings—Confession and Avoidance—Burden of proof*—The burden of proof is on a defendant who in his answer confesses and avoids the allegations of the petition.—St. Louis Tow Co. v. The Orphans Benefit Ins. Co., 529.

See Practice, civil—New Trials.

PRACTICE, CRIMINAL.

1. *Criminal law—Cause, dismissal of—Fees—Agreement—Mandamus.*—In prosecutions for misdemeanors, where the proceedings were dismissed, an agreement by defendant with the Circuit Attorney to pay all costs including that officer's fee, would be contrary to public policy, and in case of the insolvency of defendant *mandamus* will not lie against the county judges to compel the payment of the fee.—State *ex rel.* Woods v. Warramore, 27.

2. *Practice, criminal—Evidence—Negative averments*—Where the subject matter of negative averment lies peculiarly within the knowledge of the other party, it is taken as true, unless disproved by that party.—State v. Lipscomb, 32.

1. *Practice, civil—Trials—Evidence—Order of, discretionery with court.*—The order and manner of introducing testimony is always a matter resting largely in the discretion of the court.—State v. Linney, 40.

4. *Criminal law—Homicide—Self defense no justification, when.*—A party who seeks and brings on a difficulty, cannot avail himself of the doctrine of self-defense, in order to shield himself from the consequences of killing his adversary, however imminent the danger in which he may have found himself in the progress of the affray.—*Id.*

5. *Criminal law—Homicide, cruel and unusual—Jury.*—What constitutes a cruel and unusual manner of killing, is properly left to the jury to determine. —*Id.*

6. *Verdict, modification of by the Court.*—When the jury assess an imprisonment for less term than the law allows, they may modify their verdict under the direction of the court.—*Id.*

7. *Criminal law—Homicide—Time of counsel in addressing jury.*—The Court may limit the time of counsel in addressing a jury in a murder case.—*Id.*

8. *Practice, criminal—Appeals—Final judgments—Demurrers—Indictments*—Where a demurrer to an indictment is sustained, but no final judgment is given on the demurrer, an appeal will be dismissed.—State of Missouri v. Love, 106.

9. *Practice, criminal—Court of Criminal Correction of St. Louis County—Justices of the Peace—Disturbing the peace.*—A. was prosecuted before a Justice of the Peace in St. Louis County, for disturbing the peace of a neighborhood, was convicted, and appealed to the Court of Criminal Correction; *Held*, though the Justice had jurisdiction to commit for trial before said Court, but not to try, yet said court should try the case on the information filed before the Justice, or on a new one, disregarding the former trial. [State vs. Barada, 49 Mo., 504, affirmed.]—State vs. Schuerman, 165.

10. *Practice, criminal—Evidence—Abandonment of wife.—Divorce, suit for*—In a prosecution under the statute for abandonment of his wife, evidence that the defendant has brought a suit for divorce against his wife, which is still pending, is no defense.—State vs. Gunzler, 172.

11. *Practice, criminal—Information—Definiteness.*—A criminal information should be sufficiently definite to put the defendant in possession of the charge for which he is held to answer.—State vs. Rochforde, *et al.*, 199.

12. *Evidence—Indictment—Good character, effect of.*—If the jury is satisfied of the prisoner's guilt from all the other facts and circumstances detailed in evidence, his good character cannot be looked to as a ground of acquitial.—State vs. McMurphy, 251.

13. *Practice, criminal—Costs—Dismissal at cost of defendant—Fee of Circuit Attorney.*—When a proceeding on indictment is dismissed by agreement at defendant's costs, the fee to which the circuit attorney is by law entitled in case of conviction, is not taxable as part of the costs. His right to his fee depends upon conviction.—State vs. Foss, 416.

14. *Practice, criminal—Assault and battery—Complaint—Affidavit before a notary sufficient.*—An affidavit to a complaint for assault and battery sworn to

PRACTICE, CRIMINAL. Continued.
before a Notary Public, is sufficient to authorize the issue of a warrant by a Justice of the Peace.—State vs. Mullen, 430.
See Crimes and Punishments.

PRACTICE—SUPREME COURT.

1. *New trial—Objections not appearing—Result.*—Objections not raised on motion for new trial will not be considered by the Supreme Court.—Brady v. Connelly, 19.

2. *Practice, civil—Exceptions, bill of—Objections saved.*—This court will regard no errors,except those patent of record, unless saved by bill of exceptions.—Tower v. Moore, 118.

3. *Practice civil—Supreme Court—Evidence.*—In law cases this court will not weigh the evidence.—Oakes v. The Mound City Mutual Life Ins. Co., 237.

4. *Practice, civil—Supreme Court—Reversal—Improper evidence.*—This court will not reverse a case on account of the admission of improper evidence, when such evidence cannot have prejudiced the case of the appellant.—Carpenter v. Rynders, 278.

5. *Supreme Court—Testimony, weight of—Written instruments, legal effect of.*—This court in law cases will not judge of the weight of testimony, but where the evidence consists of written instruments, it will look into them to see whether they were interpreted and construed according to their legal effect.—Willi v. Dryden, *et al.*, 319.

6. *Practice civil—Supreme Court—Evidence, weight of.*—In a law case, this cour will not decide upon the weight of the evidence, when there was evidence on both sides.—Capelle v. Brainard, 479.

7. *Practice, civil—Court, Supreme—Re-trial—Expenses.*—Where the cost of a re-trial would be almost as great as the amount in controversy, this court will not interfere, unless it clearly appear that the jury have been misled to the prejudice of the appellant.—Porter v. Harrison 524.

8. *Practice, civil—Bill of exceptions—Filing after the proper time—Suprem Court.*—The Court will not notice a bill of exceptions filed after the proper time.—Hoffelman v. Frank, 542.
Practice civil—Supreme Court—Submission on record—A cause cannot by agreement be submitted to this court on the record. The law requires that a statement and brief be filed.—Disse v. Frank, 551.
See Practice, civil—Appeal; Practice, civil—New Trials; Practice, criminal, 8.

PRESUMPTIONS; See Contracts, 11; Evidence, 2; Land and Land Titles, 6.

PRICE-CURRENT; See Evidence, 5.

PROCESS; See Limitations, 2.

PROMISSORY NOTES; See Bills and Notes.

PROTEST; See Bills and Notes; Practice, civil—Pleading, 14.

Q.

QUO WARRANTO; See Officers, 1, 2.

R.

REAL ESTATE AGENT; See Brokers, 4; Contracts, 8.

RECEIVER.

1. *Receiver—Cannot sue, when.*—A receiver cannot sue in a foreign jurisdiction for the property of the debtor.—Farmers' & Mechanics' Insurance Co., to use, etc. v. Needles, 17.

LAW LIBRARY OF University of MICHIGAN

RECORD; See Land and Land Titles, 8, 9; Practice, civil.

RELEASE; See Accord and Satisfaction, 2.

REPLEVIN; See Constable, 2, 3, 4.

REVENUE.

1. *Practice, civil—Equity, bills in—Parties—Courts, County, acts of—Tax-payers, rights of—Attorney General.*—Tax-payers can file bills in equity to annul illegal acts of County Courts, when such acts will increase the taxation, and the State is not a necessary party to such suits.—Newmeyer *et al.* v. Mo. & Miss. R. R. Co., *et al.*, 81.

2. *Taxes—Schools—County Clerk—Collector.*—Under the act of 1867, [now changed] in relation to schools, [W. S., (1870) 1265,] it was the duty of the County Clerk to extend the amount of the school tax on the assessment books. The Auditor had no jurisdiction in the matter, and his mandate would not protect the collector in proceeding to collect money, as such taxes.—Brown v. Harris, 306.

3. *Officers, ministerial—Courts, mandates of—Responsibility.*—A ministerial officer is protected in executing the mandate of the Court which has power to issue such a mandate. *Id.*

4. *Money brokers—Licenses—Counties—State.*—Under the Statutes (W. S., 247 § 1; *Id.*, 1196, § 76,) the county courts are empowered to levy taxes and exact licenses from money brokers, for State and county purposes.—State v. Knox, 418.

5. *Revenue—License—Omission to levy tax—May be supplied afterwards.*—The omission by the County Court to levy a tax upon licenses, in making a general levy, does not extinguish their authority, and they can cure the omission and make a levy subsequently.—State *ex rel.* v. Maguire, 420.

6. *Revenue—License—Tax upon, when collected—Incumbrance.*—When a tax is levied on a license it becomes an incumbrance upon it, and the proper time to make the collection, is at or before the delivery of the license.—*Id.*

7. *Statutes—License—Courts, County, orders of—Validity of, if made before statute authorizing goes into effect.*—An order of a County Court requiring licenses and assessing a tax therefor, made before the statute authorizing such order goes into effect, is null and void.—Neef v. Maguire, 493.

See St. Louis, City of, 1, 2, 5; Schools and School Lands, 1.

S.

ST. LOUIS, CITY OF.

1, *Authority delegated—St. Louis City of—Charter—Ordinances.*—The charter of the City of St. Louis authorized the construction of sewers in said city, the dimensions to be determined by ordinance of the City Council; *Held*, that an ordinance leaving the determination of the dimensions to the City Engineer would create no liability on the part of the property owners to pay for the work done. [City of St. Louis, to use of Murphy vs. Clemens, 43 Mo. 395, and Sheehan vs. Gleeson, 46 Mo. 100, affirmed.]—City of St. Louis v. Clemens, 133.

2. *Laws retrospective—Constitution of Missouri.*—Certain sewers were built in the City of St. Louis under invalid ordinances, creating no liability on the part of property owners, and afterwards the legislature passed an act authorizing the city to re-assess the sum remaining unpaid on the real estate benefited by the improvement; *Held*, that the act of the legislature was retrospective and void under the State Constitution. (Art. 1, § 28.)—*Id.*

3. *St. Louis, City of—Ordinances—Improving streets—Charter.*—The City Council of St. Louis passed an ordinance directing the City Engineer to have a street graded, &c., according to law, and already an ordinance existed defining the manner of doing such work, &c. *Held*, that this ordinance is valid. [Sheehan v. Gleeson, 46 Mo., 100, affirmed.]—Moran v. Lindell, *et al.*, 229.

ST. LOUIS, CITY OF. Continued.

4. *St. Louis City of—Charter—Improving streets—Vicinity of the property.*—A property owner cannot refuse to pay the special tax for street improvements, because the centre of the street is improved, but the improvements do not extend to the sidewalk. The city authorities are the proper judges of how much it is necessary to do.—*Id.*

5. *St. Louis City of—Charter—Ordinances—Sewers—Special Taxes.*—A special tax-bill was issued for the construction of a sewer in the city of St. Louis. The City charter then in force provided, that sewers should be of such dimensions as might be prescribed by ordinance, and might be changed, enlarged or extended. The work was begun under a defective ordinance, but during its progress another ordinance was passed curing the defect, and all the work was in conformity with the latter ordinance. *Held*, that the tax-bill was valid.—City of St. Louis v. Schoenemann, 348.

6. *Statutes, construction of—City of St. Louis, charter of—Opening streets—Assessment of benefits to the city.*—The provision of the charter of the City of St. Louis, providing that not more than ten per cent. of the benefits accruing from the opening of a street shall be assessed against the City, is valid. [Uhrig vs. City of St. Louis, 44 Mo., 458, affirmed.]—State, *ex rel.* v. City of St. Louis, *et al.*, 574.

7. *Land Commissioner—Charter of City of St. Louis—Ordinance—Jury, selection of.*—The charter of the City of St. Louis provided that the benefits accruing from the opening of streets should be ascertained by the Land Commissioner by a jury, by proceedings prescribed by ordinance, and an ordinance of the City directed the Mayor of the City to furnish the Marshal summoning the jury with the names of proper persons. *Held*, that a jury so procured was a legal jury, but the Land Commissioner was not required to receive such jurors, unless they were competent and qualified.—*Id.*

See Schools and School Lands, 3; Statute, construction of, 6, 8.

ST. LOUIS COUNTY; See Mechanics' Liens, 1.

ST. LOUIS LEGAL RECORD; See Mortgages and Deeds of Trust, 2, 3.

SALARIES; See Clerk, Circuit, 1; Officers, 1, 2.

SALES.

1. *Sale on condition—Does not pass title till when.*—A sale and delivery of goods on condition that the property is not to vest until the purchase money is paid or secured, does not pass the title to the vendee, until the condition is performed; and the vendor in case the condition is not fulfilled has a right to re-possess himself of the goods, both against the vendee and his creditors; and if guilty of no neglect, may recover the goods so sold even from an innocent purchaser.—Ridgeway v. Kennedy, 24.

2. *Alienation of property—By-law of bank prohibiting—Restraint of trade.*—The right of alienation is an incident of property, and a by-law of a bank prohibiting the alienation of stock therein, or putting restrictions thereon, is void as being in restraint of trade.—Moore v. Bank of Commerce, 377.

See Mortgages and Deeds of Trust, 2, 3, 4; Partnership, 4; Sheriffs' Sales.

SCHOOLS AND SCHOOL LANDS.

1. *Taxes for schools—County Courts—Correction of assessments.*—County Courts have no power to alter the assessment of taxes to build school-houses, merely on the alleged ground that the school-house was unnecessary; the decision of that question is left to the local directors.—Petition of Powers, *et al.* 218.

2. *Taxes—Schools—County Clerk—Collector*—Under the act of 1867, [now changed] in relation to schools, [W. S., (1870) 1265.] it was the duty of the County Clerk to extend the amount of the school tax on the assessment books. The Auditor had no jurisdiction in the matter, and his mandate would not protect the collector in proceeding to collect money, as such taxes.—Brown v. Harris, 306.

SCHOOLS AND SCHOOL LANDS. Continued.

3. *Corporations, municipal—Board of President and Directors of St. Louis Public Schools—County Court of St. Louis County, Justices of—Session Act, approved March 14, 1869, and acts amendatory thereof, construction of—School Districts—Corporations organized for the purpose of education only.*—The Board of President and Directors of St. Louis Public Schools, school districts and corporations organized for the purpose of education only, are not municipal corporations in the sense of Session Act, approved March 14, 1869, and the acts amendatory thereof, which declare that no person shall be eligible to the office of Justice of the County Court of St. Louis County, who at the time of his election shall hold any office under a Municipal or Railroad corporation created by the laws of the State of Missouri.—Heller v. Stremmel, 309.

SEAL; See Notary Public, 1.

SERVICE OF PROCESS; See Limitations, 2.

SEWERS; See St. Louis, City of, 1, 2, 5.

SHERIFF; See Executions, 3, 4; Judgments, 2; Limitations, 2; Sheriffs' Sales.

SHERIFF'S SALES.

1. *Execution—Land, repeated sales of, under a difference in bids—Suit for, etc.*—Where land exposed for sale under an execution is bid off, but the money is not paid over, and the land is re-sold under the same execution, to the same bidder, but for a less sum, if the amount finally paid is sufficient to satisfy the judgment and costs, the defendant in execution will be entitled to maintain a suit in equity for the difference in the bids.—Strawbridge v. Clark, 21.

2. *Lands, sale of—Successive liens on—Surplus fund—Belong to whom.*—Where there are several liens on a tract of land, and it is sold under one of them, the surplus, after paying the lien under which it was sold, belongs in equity to the next subsequent liens, in the order of their priority. *Id.*

3. *Deed—Judgment—Variance not fatal, when.*—A sheriff's deed is not invalid because it recites a judgment against "Smith & Haliburton," while the record in the cause shows a judgment against "Jacob Smith and Wesley Haliburton."—Union Bank v. McWharters, 34.

4. *Sheriff's sales, Validity of—Purchaser under.*—A purchaser at a sheriff's sale looks only to the judgment, execution, levy, and sheriff's deed. All other questions are between the parties to the judgment and the sheriff.—Lenox *et al.* v. Clarke, 115.

5. *Sheriff's sales, validity of—Erroneous judgment—Collateral proceedings.*—Where a sheriff sells land under a judgment, erroneous in the fact that it was a joint judgment whereas only one defendant was served, such judgment is not void as to the defendant served, and can only be set aside as to him, by direct proceedings for that purpose, and cannot be attacked in a collateral proceeding. *Id.*

SLANDER; See Partnership, 5.

STATUTE, CONSTRUCTION OF.

1. *Statute, construction of—Acts of Legislature—Enacting clause—Not essential to the validity of the act.*—The provision of the constitution of Missouri, (Art. 4, § 26;) declaring that the style of the laws of this State shall be "Be it enacted" etc., is directory and not mandatory, and an Act regularly passed by the Legislature, may be valid when this clause is omitted.—City of Cape Girardeau v. Riley, *et al.*, 424.

2. *Statute, construction of—Act construing a former act, not an original one.*—The revision of a law does not have the effect of making the revised law entirely original, so as to be construed as though none of its provisions had effect but from the date of the revised law; when a former provision is contained, in a revised law it operates only as a continuance of its existence, and not as an original act.—*Id.*

3. *Statutes, construction of—Legislature—When statute takes effect.*—The statute (2 W. S., 894, § 4,) declaring that acts of the Legislature shall not take effect

STATUTE, CONSTRUCTION OF. Continued.

till ninety days after passage, unless a different time is appointed by the act, is valid, and is no restriction on the power of the Legislature.—Neef v. Maguire, 493.

4. *Statutes—Licenses—Courts, County, orders of—Validity of, if made before statute authorizing goes into effect.*—An order of a County Court requiring licenses and assessing a tax therefor, made before the statute authorizing such order goes into effect, is null and void.—*Id.*

5. *Statute, construction of—Quo Warranto—Attorney General, information by—Act of Feb. 21, 1873.*—The act of Feb. 21, 1873, prohibiting the drawing or paying of a warrant for the salary attached to a State office, when said office is contested or disputed by two or more persons claiming title thereto, or by information in the nature of quo warranto, does not apply to an information filed by the attorney general ex-officio.—State *ex rel.* Vail, v. Clark, 508.

6. *Ordinances—Ordaining clause, omission of—Act directory.*—An ordinance of a city is not invalid, because the ordaining clause is omitted; the law requiring such a clause, but not declaring the law void if that form is not pursued, is directory. (City of Cape Girardeau v. Riley, p. 424—affirmed)—City of St. Louis v. Foster, 513.

7. *Statutes validity of—Forms prescribed—Departure from—Ordinances—Authentication—Law directory.*—A statute authenticated in the manner pointed out by law cannot be impeached by showing a departure from the forms prescribed by the constitution in the passage of the law; and the same principle applies to municipal corporations. (Pacific Railroad v. Governor, 23 Mo. 353, affirmed.) Such provisions or laws are directory, if there is no provision declaring such laws or ordinances void, if the said forms are not complied with —*Id.*

8. *Ordinances—Revision of—Continuity.*—When a former law is included in a revised law the revision has not the effect of breaking the continuity of those provisions which were in force before.—*Id.*

9. *Ordinances—Collation—St. Louis, City of—Publication—Seal—Proof*—When the ordinances of the City of St. Louis are collated and published by authority of the city they are admissible in evidence without any seal or attestation. —*Id.*

10. *Statute, construction of—When retrospective.*—Statutes are not to be construed as having a retrospective effect, unless the intention is clearly expressed that they shall so operate, and unless the language employed admits of no other construction.—State *ex rel.* Blakeman, v. Hays, 578.

See ATTACHMENT, 1, (W. S. 1009, § 181).
CORPORATIONS, 4, (W. S. 293, § 22;) 5, (W. S. 336, §13).
DAMAGES, 5, (W. S. 519, § 2), 6, (W. S. 520, § 2).
GARNISHMENT, 1, (R. C. 1855, p. 260).
HUSBAND AND WIFE, 4, (W. S. 1034).
LAND AND LAND TITLES, 12, 13, 14, 15, (Acts of Congress).
LEASE, 3, (W. S. 880, § 15).
LIMITATIONS, 2, (W. S. 920, § 24).
MECHANICS' LIENS, 2, (W. S. 907-8, §§ 1-4).
OFFICERS, 1, (Act, Feby. 21, 1873, concerning payment of salaries of State officers).
REVENUE, 2, (W. S. 1263), 4, (W. S. 247, § 1; *Id.* 1196, § 76).

STOCK; See Banks and Banking, 1, 2; Corporations, 2.

STOCK-HOLDER; See Corporations, 2, 3, 4, 5.

STREETS; See St. Louis, city of, 3, 4, 6, 7.

SUNDAY; See Justices' Courts, 3.

SURETIES; See Bonds, 1, 2; Bonds, Official, 1; Landlord and Tenant, 6; Practice, civil—Pleading, 8, 9.

SURVIVORSHIP; See Husband and Wife, 1.

T.

TAXES; See Revenue.

TIME, COMPUTATION OF; See Justices' Courts, 3.

TRESPASS.

1. *Trespass—Fencing, removal of—Possession, etc.*—An action of trespass under the statute for removing certain fencing, will not lie against a defendant who is in actual possession of the premises on which the fence was built. In such case the remedy is by ejectment.—Brown v. Carter, 46.

See Land and Land Titles, 3.

TRUSTS AND TRUSTEES.

1. *Trusts and trust funds—Bank deposits—Consent of cestui que trust—Transfer of certificates of deposit.*—A. owing B. money on collections, made a special deposit of that amount in a bank, subject to his own order which he intended for B. *Held*, by the consent of B. to this action, the money became his, and after the indorsement of the certificate of deposit to him, his title thereto became complete at law.—Phillips v. Franciscus, *et al.*, 370.

2. *Equity—Trust funds, diversion of—Cestui que trust—Third party.*—Third parties cannot for their own protection require the *cestui que trust* to pursue the proceeds of trust funds in other investments; the *cestui que trust* have their option to do so, or to hold the trustees liable.—Barr *et al.* v. Cubbage, *et al.*, 404.

See Limitations, 5, 6; Mortgages and Deeds of Trust.

V.

VENDORS' LIEN; See Land and Land Titles, 2.

VERDICT; See Practice, civil—New Trials, 2; Practice, civil—Trials; Practice, criminal, 6.

W.

WILLS.

1. *Wills—Establishment of—Witnesses—Beneficiaries competent.*—Beneficiaries under a will being parties to the action, are competent witnesses in establishing it. [Garvin v. Williams, 50 Mo. 206 affirmed.]—Gamache v. Gamba, Admr. *et al.*, 287. PER CURIAM, JUDGE EWING DISSENTING.

WITNESSES; See Evidence; Practice, civil—Trials, 12; Wills.